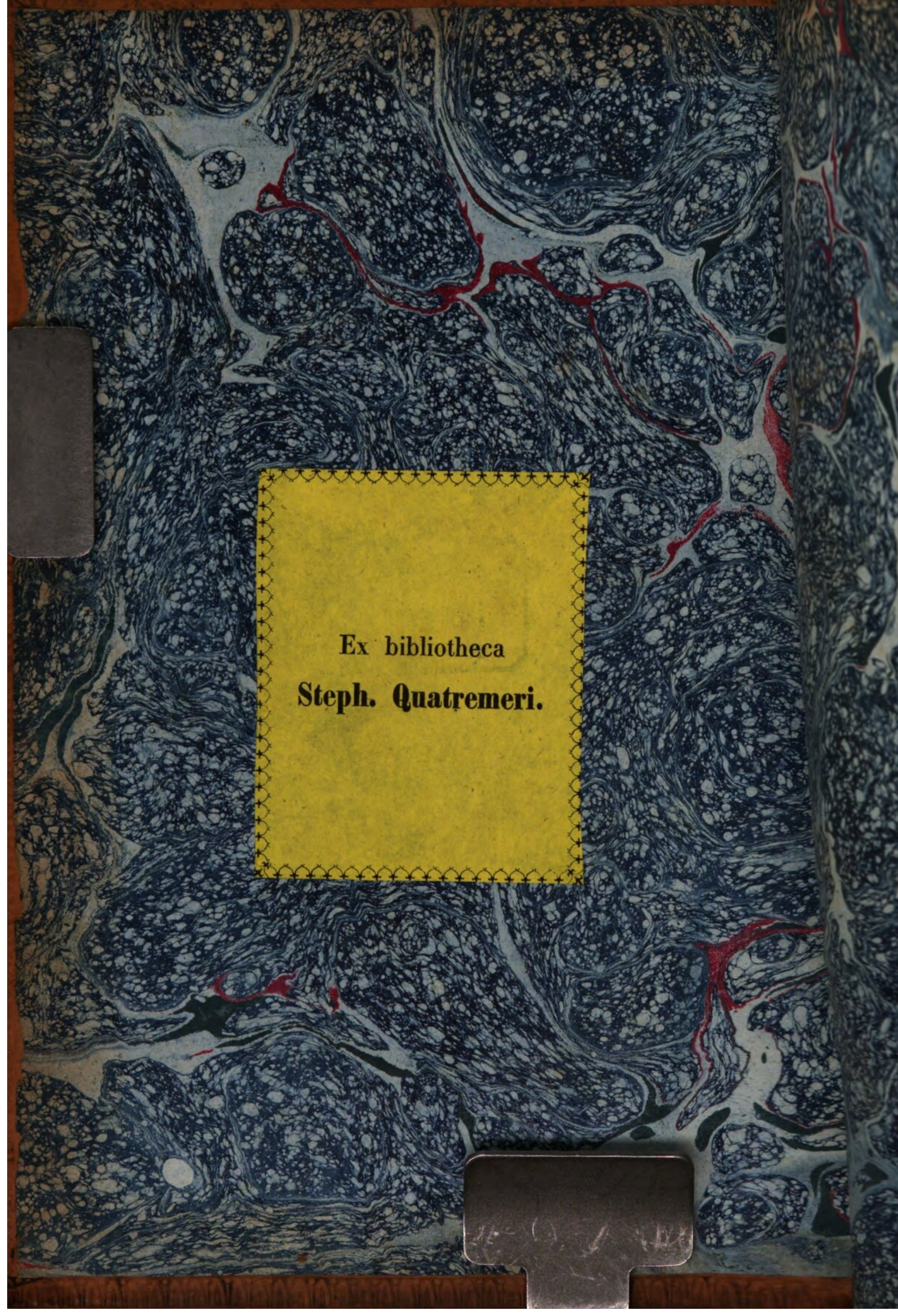
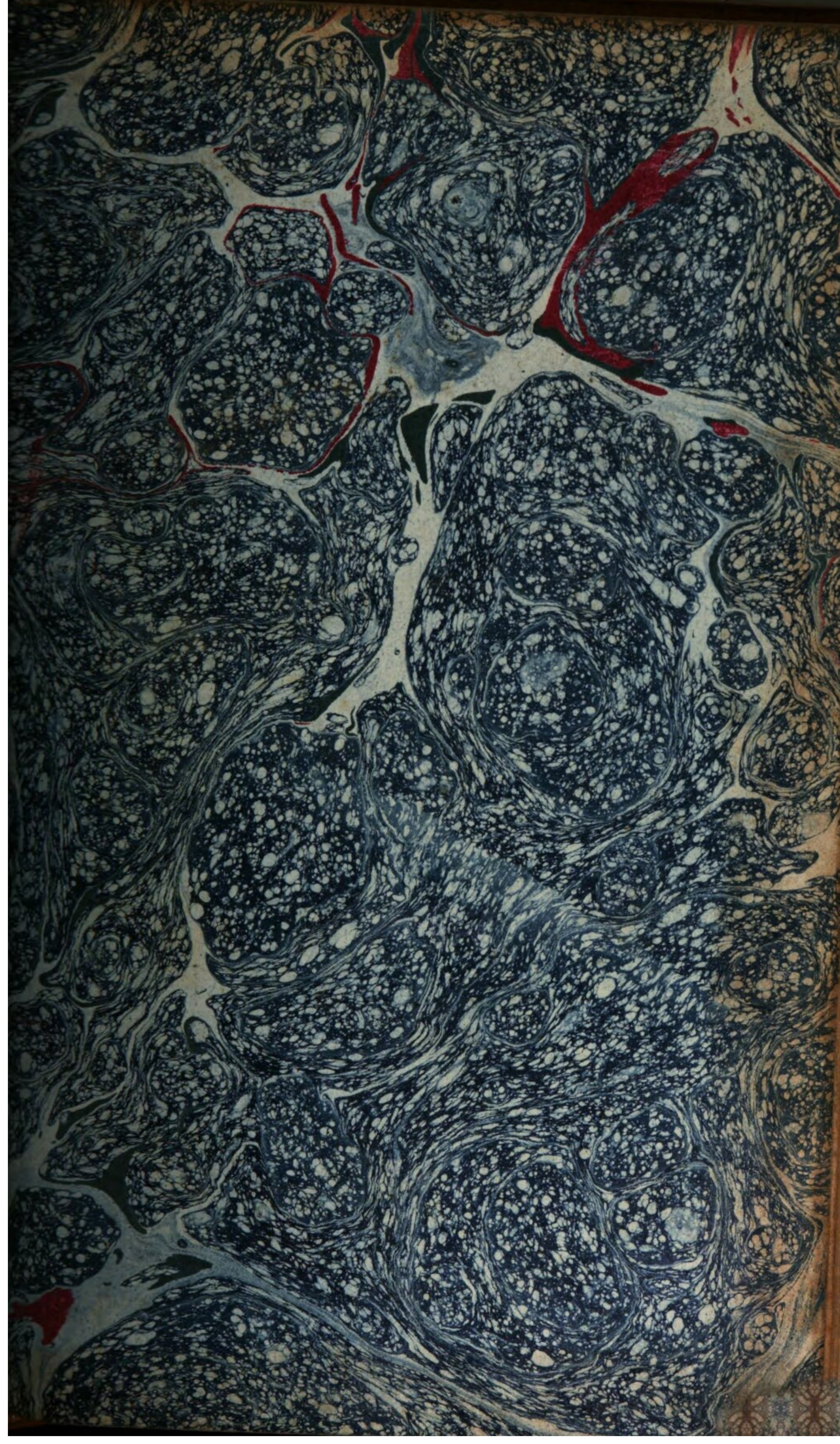


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PRACTICAL TREATISE
ON THE
LAW OF ELECTIONS.

T. DAYTON, FOREST STREET, WHITEHALL, LONDON.

THE PRACTICAL TREATISE

LAW OF ELECTIONS

IN TWO VOLUMES

VOLUME I

LAW OF ELECTIONS

IN TWO VOLUMES

VOLUME I

THE PRACTICAL TREATISE

LAW OF ELECTIONS

T. DAVISON, LOMBARD-STREET, WHITEFRIARS, LONDON.

A
PRACTICAL TREATISE
ON THE
LAW OF ELECTIONS,
RELATING TO
ENGLAND, SCOTLAND,
AND
IRELAND.

By WILLIAM THOMAS ROE, Esq.
OF LINCOLN'S INN, BARRISTER-AT-LAW.

IN TWO VOLUMES

VOL. I.

SECOND EDITION.

LONDON:

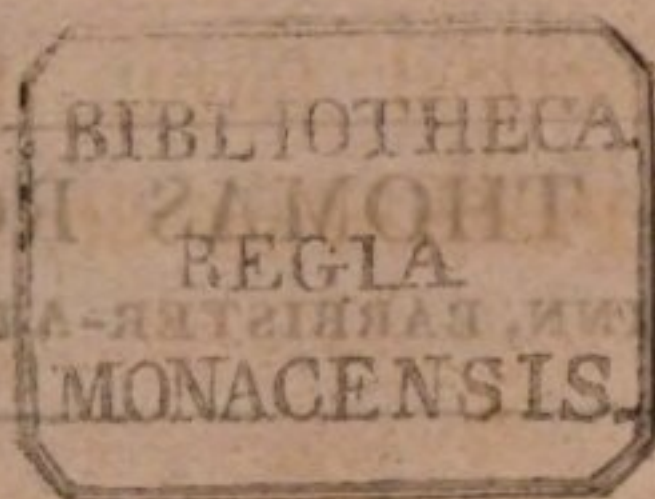
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DUBLIN.

1818.

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PRACTICAL TREATISE

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P R E F A C E

TO THE

FIRST EDITION.

THE object of the following Treatise is to arrange, into a practical form, the Law of Elections for the Parliament of the United Kingdom.

This subject, as affecting *England, Scotland,* and *Ireland*, is not collectively touched upon, in any of the works which have hitherto appeared.

It is true that the law regarding those different elections, in some points, so essentially varies, as almost to want any relative connection; in others, however, the affinity is such, as to render decisions, under either, productive of principles and analogies for each.

The union with *Ireland* has, in the trial of controverted elections, introduced questions entirely new. And, indeed, upon another branch, that of the eligibility and disqualifications of members, the previous law of *Great Britain* is not to be received without attention to the statute 41 Geo. 3, c. 52, which passed upon the occasion of the *Irish* union. The act alluded to seems to have mutualized the statutory disqualifications of either country.

It is to be observed likewise, that the several elections are alike the subject of the jurisdiction of the house of commons and of select committees; and, therefore, also, it is more than a matter of convenience, that the law should be contemplated under the same view. This was one consideration which induced the undertaking.

The arrangement which I have pursued is this: Touching shortly, in the first instance, upon the convening, holding, and dissolving parliament, and the matter therewith connected; I proceed to consider the landed qualification

requisite, eligibility for the house of commons, and the several disqualifications of members; as well as the effect of choosing incapacitated persons. The next part treats of undue interference at elections; and of the election proceedings from the issuing the writ to the return. The third part comprizes the proceedings upon trials of controverted elections. The fourth, the qualifications and disqualifications of electors. The fifth, and last, the law of bribery and treating, (except as to the consequent disqualification for parliament, which falls within the contents of a former part.)

In each chapter, the law is first given as applicable to elections in *England*; that which appertains to *Scotland* and *Ireland* is subjoined in separate sections: in this, however, the intention has been, not to do more than point out the peculiarities of each, as differing from the corresponding matter which immediately precedes.

With respect to the statute law, the several

acts of parliament which relate to each branch of the United Kingdom, will be found, either in the body of the work or in the Appendix. Those of *England*, connected with the matter of the three first parts, are in general placed, by way of note, where they are immediately applicable. The remainder, with the acts respecting particular places in *England*, and also the *Scots* and *Irish* statutes, are introduced in the Appendix.

I trust that this arrangement of the statutes will not be deemed inconvenient. Those, the different clauses of which, are herein separated one from the other, are in general disconnected in their nature, the language of one part of the act affording no clue for the construction of another; and when necessary, the different sections will be found by reference to the table of statutes. Those statutes which are differently circumstanced in this respect (in general relating to the three latter parts) are kept together as entire acts; as are also those which are directed to be read at elections.

The reports of some short, but material cases, not hitherto printed, are introduced in the notes: I have collected the materials for them from sources upon which I can rely; and having compared them with the minutes of the committee-clerk, taken at the time, I trust they will prove substantially correct.

Election questions are only of occasional recurrence; to the profession they are less habitual than those which are dealt with in *Westminster-hall*; to persons not conversant with legal inquiry, called upon, in the situation of Returning Officers, to act in cases of anxiety and importance, without opportunity for consideration and advice, such questions are oftentimes fraught with difficulty.

These, as well as the reasons already adverted to, appeared to me to call for a work, having for its end, not only to incorporate each graft upon the original election code, but to subdivide, and methodize, what constitutes a law of general interest. This it has been my endeavour to accomplish.

I ought not perhaps to conclude, without acknowledging the abundance of information contained in the works of lord *Glenbervie*, Mr. serjeant *Heywood*, and Mr. serjeant *Peckwell*, (now *Blosset*). The consideration in which they are holden is so evident, as almost to preclude the observation. The resort to them, upon all subjects of this nature, best bespeaks their eulogy.

With respect to the utility of this undertaking, I am in no apprehension for the judgment of the profession or the public. With respect to the execution, I wish I could await it with equal confidence.

The first parts and the Appendix are now published. The remainder will follow, I hope, at no distant period.

WILLIAM THOMAS ROE.

LINCOLN'S-INN, Sept. 26, 1812.

ADVERTISEMENT

TO THE

SECOND EDITION.

SINCE the year 1812, when this work first appeared, so much additional matter has accrued, arising both from new acts of parliament, and from decisions of cases expressly upon, or intimately connected with the subject of parliamentary elections, as to render another edition of those parts which were originally published, absolutely necessary. The alterations and additions which have taken place since the former edition would have been given by way of supplement to what was already in print, but it was found quite impracticable to accomplish this in any sufficient and satisfactory manner.

The collection of statutes is continued to the present day, and it will be found to contain many which are in no other election-work, but which obviously belong to the present subject.

Amongst the additions which are now introduced, the report of the *Rochester* case, 1817, of which the author took notes (the first and only case upon the subject which it embraces) will be found in the *Appendix*.

The author had prepared a report of the appeal case of *Black v. Campbell*, in the house of lords, (9th and 16th May, 1817,) which was a proceeding under the stat. 16 Geo. 2, c. 11, § 26, to recover against the appellant, the town-clerk of *Inverkeithing*, a penalty of £500, and to subject him to six months' imprisonment, and to incapacity for his office, for not having returned the appellant as delegate for *Inverkeithing*, he claiming to have been elected by the majority of the magistrates and town-councillors. The question was, whether the appellant was justified in rejecting the votes of certain of the town-councillors who were upon the list, but who had ceased to reside. The decision, however, turned upon the pleadings, which made it unavailable for general purposes; wherefore, and as it would have run to considerable length, it has not been inserted.

The author has to lament that his professional avocations should so long have impeded the publication of the remainder of the work. It is now in considerable forwardness, and he hopes that it will be completed before the period when a treatise of this nature would be more particularly called for.

LINCOLN'S-INN, May 25, 1818.

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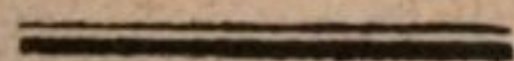
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40. c. 43.	-	-	-	<i>App. cccxxii</i>
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(For the Subjects of these Acts, see Appendix Analysis
X.)

VOL I.

Addenda et Corrigenda.

Page

- 25 line 7. Dele " of."
355 line 3. For " 24 Geo. 3." read " 15 Geo. 3."
638 In the first line, insert " they."
652 Last line but one, for " return," read " returning officer."

VOL. II.—APPENDIX.

Errata et Corrigenda.

- xlvi. Title of act, for " *Wales*," read " *Wages*."
lxxxviii. Dele " to be read at elections for *Westminster*."
cxvii. In the commission, after " *Great Britain*," insert " and
Ireland," throughout.
ccxii. In the note, for " this volume," read " vol. 1."

THE
LAW OF ELECTIONS.

PART I.

CHAPTER I.

OF PARLIAMENT.

SECTION 1. *Parliament, how convened, and how often to be assembled.*

SECTION 2. *Parliament, how prorogued or dissolved, and when to be convened notwithstanding prorogation or adjournment.*

SECTION 3. *Of the provisions for the case of the demise of the crown.*

SECTION 4. *Of the duration of parliament.*

SECTION 5. *Attendance of members of parliament how enforced.*

SECTION 6. *Of the privilege of parliament.*

IT is a branch of the royal prerogative that no parliament can be convened by its own

Prerogative of the crown to convene parliament

* Adverting to the title and the professed object of this work, the introduction of any preliminary matter may require some apology, but that which is contained in this first chapter seems so nearly allied to the main enquiry, that it is hoped it will not appear irrelevant.

Sect. 1.

authority, or by the authority of any, except the king alone.

1 Com. 150.

That this prerogative is founded upon very good reason, not only as being in all respects most convenient, but as being most consistent with the dignity of the parliament, that it should be called together by the supreme branch of the legislature, is clearly shewn by Mr. Justice Blackstone.

Cases wherein it was otherwise convened only justified by the necessity.

The two instances in which the lords and commons met without being so convened; the one wherein king Charles the second was restored, the other wherein the crown and kingdom were disposed of to the prince of Orange, he proves to have been founded upon the necessity of the thing, and that from the particular circumstances of each, neither can be drawn into a precedent in prejudice of the rights of the crown.

12 Car. 2. c. 1.
13 Car. 2. c. 7
& 14. 1 W. &
M. st. 1. c. 1.
2 W. & M. st. 2.
c. 2. § 2.

It is to be observed also, that in each of those instances, it was thought adviseable by the very first act that passed to declare “the lords and commons then sitting to be the parliament,” and moreover further to confirm each of such parliaments, and the acts therein passed, by statute in the respective succeeding

parliaments; and the confirmatory acts in the case of Charles the second, recited at the same time, that the manner of calling the parliament so confirmed, was not to be drawn into example.

Sect. 1.

By the common law the king was quite at liberty in the exercise of this prerogative, it being perfectly in his discretion, when and how often to convene the parliament; and in the periods of our history, when the crown possessed a considerable revenue independent of the bounty of the commons, the monarch was generally disinclined to meet them.

This discretion of the crown beginning to be regarded with jealousy, was in some measure broken in upon by the legislature in the early part of the fourteenth century.

By the concise statute of 4 Edw. 3. c. 14. 4 Edw. 3. c. 14.
 “ it is accorded, that a parliament shall be hol-
 “ den once every year, and more often, if need
 “ be.” And by the stat. 36 Edw. 3. st. 1. c. 10. 36 Edw. 3. st.
 “ For the maintenance of the said articles and 1. c. 10.
 “ statutes” (several having been just passed),
 “ and redress of divers mischiefs and grievances
 “ which daily happen, a parliament shall be

Sect. 1.

“ holden every year, as another time was or-
“ dained by statute.”

1 Com. 53.

By these statutes the king was not obliged to call a *new* parliament every year, but only to permit a parliament to sit annually for the redress of grievances, and dispatch of business, “ if need be.” These last words expressly used in the former statute, and adopted by reference in the latter, are so loose and vague, as very much to weaken the efficiency of these provisions, and accordingly at times there have been considerable intervals, during which no parliaments have been holden. Such an interval there was for six years in the reign of Henry the eighth, another for six years in the reign of James the first, and one for twelve years in the reign of Charles the first.

This circumstance, (as might be expected, particularly in the latter case), produced a statute to prevent the recurrence of the mischief. By the 16 Car. 1. c. 1. if the king neglected to call a parliament for three years, the peers might assemble and issue out writs for choosing one; and in case of neglect of the peers, the constituents might meet, and elect one themselves.

This statute was afterwards repealed, as being derogatory of the prerogative of the crown, by the stat. 16 Car. 2. c. 1. § 1 & 2.

Sect. 1.

16 Car. 2. c. 1.
§ 1, 2, 3.

The same act, however, by § 3. provides “that the sitting and holding of parliaments shall not be intermitted or discontinued above three years at the most.” And again the stat.

1 W. & M. sess. 2. c. 2. declaring the rights and liberties of the subject, &c.; by § 1. article 13. declares, “that for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently.”

1 W. & M.
sess. 2. c. 2. § 1.
art. 13.

This indefinite *frequency* is now reduced to a certainty, by the stat. 6 & 7 W. & M. c. 2. § 1. reciting *inter alia*, “that by the antient laws and statutes of this kingdom, frequent parliaments ought to be held, and that frequent and new parliaments tend very much to the happy union and good agreement of the king and people,” and enacts, as the statute of Charles had done, that from thenceforth a parliament shall be holden once in three years at the least.

6 & 7 W. & M.
c. 2. § 1.Parliaments to
be holden once
in three years.

Thus by the positive written law, more than three years cannot elapse without the holding of a parliament.

Sect. 1.

Moreover the necessity of this law has been greatly superseded by the vigilance of the commons, which has contrived to furnish their supplies to the crown in such manner only as incidentally, though effectually to secure their being convened for the dispatch of business once in every year*.

SECTION 2. *Parliament, how prorogued or dissolved, and when to be convened, notwithstanding prorogation or adjournment.*

AS it is with the crown to call together a parliament in the first instance, so is it with the crown; to prorogue or dissolve it at pleasure, the manner and circumstances of which are regulated by antient usage, together with some statutory provisions which have been superadded, the tendency of most of which is in aid rather than in derogation of the royal prerogative.

It was considered to be the law that the king could not summon a parliament before the day to which it was last prorogued †.

* The mutiny and malt by Charles the second, in acts are passed for one year 1677, of calling together a parliament on the 25th of July, it having been pro-

† The measure adopted

And parliament being prorogued to a certain day, it has grown into custom that they are not to meet on that day for the dispatch of business, unless it be so declared by proclamation, if it be prorogued by proclamation; and if otherwise prorogued, it is the established practice, when it is intended that they shall sit for the dispatch of business, to issue a proclamation to that effect, which proclamation, unless upon some urgent occasion, bears date at least forty days before the meeting*.

Whether the *lex et consuetudo parliamenti* indispensably required the above preliminary steps or not, the legislature has contemplated certain cases of exigency, in which any difficulty in convening the parliament would be highly detrimental, and has therefore by several sta-

rogued to the 10th of October, was against the opinion of lord Clarendon, and is considered to have been illegal. 2 *Hat.* 239 (a).

* In 1788, the parliament had, on the 25th September, been prorogued to the 29th November, on which day, there being no further prorogation, though there had been no proclamation for meeting for dispatch of business, a number of members assembled; a notification was

thereupon made to the house, that in consequence of his majesty's indisposition he had given no orders for either holding or proroguing the parliament; an adjournment of a fortnight then took place, and the speaker, by order of the house, sent circular letters to the sheriffs and stewards of the several counties, requiring the attendance of the members. See also the proceedings, November, 1810.

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Parliament does not meet for dispatch of business, unless so declared by proclamation.

44 Journ. 1.
20 Nov. 1778,
et seq.

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In cases of invasion, or imminent danger thereof, or of rebellion or insurrection, if parliament be adjourned or prorogued the king may convene them upon fourteen days proclamation.

26 Geo. 3. c. 107. § 96,
97. 42 Geo. 3. c. 90. § 111.
113. 146, 147. & 42 Geo. 3. c. 91. § 107.
109. 141, 142.

So now in any case, when the king shall be so pleased.

tutes provided that in cases of actual invasion, or of imminent danger thereof, or in cases of rebellion or insurrection, the king having first communicated the occasion to parliament, if sitting, and if no parliament be sitting, having notified the occasion by proclamation, may order the militia to be called out and embodied, and that wherever this is done, "if the parliament shall be then separated by such adjournment or prorogation as will not expire within fourteen days, his majesty may and shall issue a proclamation for the meeting of the parliament within fourteen days, and the parliament shall accordingly meet, &c."

This provision was introduced into the militia acts, and was confined to the cases therein specified, but a general provision has been made by the stat. 37 Geo. 3. c. 127. § 1. * by which

37 Geo. 3. c. 127. § 1.

* "That statute recites "privy council of his majesty, his heirs or successors, to issue his, or their royal proclamation, giving notice of his or their royal intention, that parliament shall meet and be holden for the dispatch of business; and enacting, that whenever his majesty, his heirs or successors, shall be pleased, by and with the advice of the

"privy council of his majesty, his heirs or successors, to issue his, or their royal proclamation, giving notice of his or their royal intention, that parliament shall meet and be holden for the dispatch of business, on any day, being not less than fourteen days from the date of such proclamation, the same shall be a full and sufficient notice to all per-

the king may now convene the parliament, although prorogued, at any time that he pleases, with the advice of his privy council, such time not being less than fourteen days from the date of the proclamation.

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A provision to the same effect is made for cases where the parliament shall stand *adjourned* for more than fourteen days, enabling the king to issue his proclamation for their meeting at any day not less than fourteen days from the date of such proclamation, by the stat. 39 & 40 Geo. 3. c. 14. § 1.

39 & 40 Geo. 3.
c. 14, § 1.
The king may
convene par-
liament al-
though ad-
journed.

SECTION 3. *Of the provisions for the case of the demise of the crown.*

THE wisdom of the legislature has also adverted to another case of considerable importance, namely, that of the demise of the crown.

By the common law, the demise of the crown

“ sons whatever, of such the
“ royal intention of his ma-
“ jesty, his heirs and suc-
“ cessors, and the parliament
“ shall thereby stand pro-
“ rogued to the day and
“ place therein declared,

“ notwithstanding any pre-
“ vious prorogation of the
“ parliament to any longer
“ day, and notwithstanding
“ any former law, usage, or
“ practice to the contrary.”

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7 & 8 W. 3.
c. 14. 4 Ann.
c. 8.

6 Ann. c. 7.
§ 4.

Parliament
not to be de-
termined by
the demise of
the crown.

If sitting to
proceed to act
notwithstand-
ing such de-
mise, for six
months, unless
sooner pro-
rogued or dis-
solved.

If prorogued,
to meet ac-
cording to the
prorogation,
and continue
for six months,
&c.

6 Ann. c. 7.

§ 5.

Parliament to
meet immedi-
ately after the
death.

put an immediate end to the parliament. But it has
been provided by the statutes 7 & 8 W. 3. c. 14.
and 4 Ann. c. 8. and ultimately by the stat. 6 Ann.
c. 7. § 4. “that parliament shall not be deter-
“mined or dissolved by the death or demise of
“her majesty, her heirs or successors, but shall
“continue, and is thereby empowered and re-
“quired, if *sitting* at the time of such demise,
“immediately to proceed to act, notwithstand-
“such death or demise, for and during the term
“of six months and no longer, unless the same
“be sooner prorogued or dissolved.”

And by the same clause, “if the parliament
“shall be *prorogued*, then it shall meet and sit
“on and upon the day unto which it shall be
“prorogued, and continue for the residue of
“the said term of six months, unless sooner
“prorogued or dissolved.”

By § 5. * of the same statute, if there be a
parliament in being at such time “but the same
“happens to be separated by *adjournment* or
“*prorogation*, such parliament shall imme-
“diately after such demise meet, convene, and
“sit, and shall act notwithstanding such death

* The case of proroga- shall meet on the day to
tion differently provided for, which it is prorogued, the
in the 4 and 5 sections, the other that it shall meet im-
one directing that parliament mediately on the demise.

“ or demise, for and during the time of six
 “ months, and no longer, unless the same shall
 “ be sooner prorogued or dissolved.”

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The above acts had also provided for the event of there being *no parliament in being* at the time of such demise, but the provisions therein made have undergone some alteration, and the law now stands upon the stat. 37 Geo. 3.

37 Geo. 3.
c. 127. § 3.

c. 127. The § 3. of which has enacted that in case of such demise, “ subsequent to the dissolution or expiration of a parliament, and before the day appointed by the writs of summons for assembling a new parliament, then and in such case, the last preceding parliament shall immediately convene and sit at *Westminster*, and be a parliament, to continue for and during the space of six months, and no longer, to all intents and purposes, as if the same parliament had not been dissolved or expired, but subject to be sooner prorogued or dissolved by the person to whom the crown shall come.”

In the case of the king's demise after the dissolution of parliament, and previous to the day appointed for the assembling a new one, the last preceding parliament to meet and sit, &c.

The § 4. of the same act provides, that in case of the demise of a successor to the crown within the said period of six months limited for the duration of the last preceding parliament, and before the same shall have been dissolved by such successor, or after the same shall have

And so in case of the demise of a successor to the crown, within six months after his succession, without his having dis-

Sect. 3.

~
 dissolved the parliament, or after the same shall have been dissolved, and before a new one shall have met.

been so dissolved, and before a new parliament shall have met, the “last preceding parliament
 “shall immediately convene and sit, and continue to be a parliament to all intents and
 “purposes, for and during six months longer,
 “to be computed from and immediately after
 “such last mentioned demise, but subject to be
 “sooner prorogued or dissolved by the person
 “who shall then succeed to the crown.”

In case of such demise on day appointed for assembling new parliament, or after such day, and before it shall have sat, such new parliament to convene, &c.

And by § 5. In case of such demise, *on the day appointed by the writs of summons for calling and assembling a new parliament, or at any time after such day* so appointed, and before such *new parliament shall have met* and sat, “such
 “new parliament shall immediately after such
 “demise, convene and sit at *Westminster*, and
 “be a parliament to all intents and purposes,
 “to continue for and during the term of six
 “months, and no longer, but subject to be
 “sooner prorogued or dissolved as aforesaid *.”

* It was provided by the stat. 5. Geo. 3. c. 27. § 20. that if the crown had descended to any of the children of his present majesty, when under the age of eighteen years, if a parliament had been then in being, which had met and sat, such parliament was to continue for three years, unless the

successor to the crown sooner attained the age of eighteen: or unless sooner dissolved by the regent, with consent of the council; and if no parliament had been then in being, then the last parliament was to convene and sit for three years, under the same defeasances.

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SECTION 4. *Of the duration of parliament.*

THE most material change in the prerogative of the crown with regard to parliament, was the obligation imposed upon the sovereign of calling a new parliament within a certain period.

Formerly a parliament might last for the life of the monarch who convened them, and such continued to be the law, until by the statute 6 & 7 W. & M. c. 2. § 3. no parliament was to have any continuance longer than for three years.

6 & 7 W. & M.
c. 2. § 3.
No parliament
was to con-
tinue longer
than three
years.

The duration of parliaments was again altered by * the stat. 1 Geo. 1. c. 2. stat. 38, by which they were made septennial. And this Mr.

By 1 Geo. 1.
st. 2. c. 38.
Parliament
septennial.

* The 1 Geo. 1. stat. 2. c. 38. after reciting the third section of the stat. of 6 & 7 W. 3. c. 2. proceeds. "and whereas it hath been found by experience, that the said clause had proved very grievous and burthensome, by occasioning much greater and more continued expences, in order to elections of members to serve in parliament, and more violent and lasting heats and

"animosities among the sub-
jects of this realm than
"were ever known before
"the said clause was enacted,
"and the said provision, if it
"should continue, may prob-
ably at this juncture,
"when a restless and popish
faction are endeavouring
"to renew the rebellion with-
in this kingdom, and an
invasion from abroad be
destructive to the peace
and security of the govern-

1 Geo. 1. st. 2.
c. 38.

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 1 Com. 189.

Justice *Blackstone* instances as shewing the vast authority of parliament, that the very same house, which was chosen for three years enacted its own continuance for seven.

Thus as our constitution now stands, the parliament must expire or die a natural death at the end of every seven years, unless sooner dissolved by the royal prerogative.

SECTION 5. *Attendance of members of parliament how enforced,*

THE attendance of persons who are summoned to parliament is considered as a paramount duty.

It was not only early enjoined by the statute law, but various further means have been taken to compel and inforce a regular observance of it.

Parliament to continue for seven years, unless sooner dissolved by the king.

“ment.” Be it enacted, &c.
 “that this present parliament,
 “and all parliaments that
 “shall at any time hereafter
 “be called, assembled, or
 “held, shall and may respec-
 “tively have continuance for
 “seven years and no longer,
 “to be accounted from the

“day on which by the writ
 “or summons this present
 “parliament hath been, or
 “any future parliament shall
 “be appointed to meet.”

The duration of parliaments in Ireland was limited by the Irish statute of 7 Geo. 3, c. 3. to eight years.

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By the 5 Rich. 2. stat. 2. c. 4. if any person summoned to parliament “do absent himself, “and come not at the said summons, (except “he may reasonably and honestly excuse himself to our lord the king) he shall be amerced “and otherwise punished, according as of old “times hath been used to be done,” &c.

5 Rich. 2.
stat. 2. c. 4.
Members abs-
enting them-
selves without
lawful excuse,
to be amerced.

The stat. 6 H. 8. c. 16. forbids members to depart till the parliament be fully finished, ended, or prorogued, except by licence of the speaker, upon pain of losing their wages*; the same statute in such case discharging the place they represented from payment of the wages.

6 H. 8. c. 16.
Members not
to depart till
parliament be
finished. with-
out leave, &c.

In 1554, informations were preferred by the attorney-general against thirty-nine members of the house of commons for departing without licence, “whereof” lord *Coke* says, “six “being timorous burgesses *ad redimendam “verationem* submitted themselves to their “fines, but whether they paid any, or very “small, we have not yet found.” The death

4 Inst. 17.
2 Hat. 68.

Informations
preferred
against mem-
bers for so
doing,

* The wages were, according to lord *Coke*, for a knight of a county, four shillings *per diem*, and for a citizen or burgess, two shillings; which, by the writ set forth by him, is *pro expensis suis veniendo ad parliament' præ-*

dict'. ibid. morando ét exinde ad propria redeundo. 4 Inst. 48. See also the recital of stat. 35 H. 8. c. 11. the bill for the knights and burgesses in *Wales* concerning the payment of their fees and wages.—Appendix xlviii.

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of queen Mary put an end to the proceedings against the rest.

D'Ewes, 309.

Members so
doing, to be
fined.

On the 18th March, 1580, the house ordered that every knight who had been absent for the whole session should have £20 for a fine set and assessed upon him, and every citizen, burgess, and baron for the like £10, and that such as had been there and departed without leave were to lose their wages; to insure which the clerk of the crown was forbidden to deliver out writs for levying the wages of such persons.

1 Journ. 344.

The present mode of compelling attendance of the house, appears to have been introduced 27th February, 1606, when it was resolved, *first*, that the house should be called; and, *secondly*, that the serjeant should be sent for such as were absent, having no reasonable excuse, and this still continues to be done upon important occasions*.

* See the precedents upon this subject. 2 Hats. 68,

SECTION 6. *Of the Privilege of Parliament.*

AS on the one hand, the attendance of persons summoned to parliament is exacted and enforced by law; so on the other there are considerable immunities and privileges incident to such attendance, the principal of which, are demanded of the king in person, by the speaker of the house of commons, at the opening of every new parliament.

This demand, however, is only by way of recognition, of what depends, not upon the concession of the crown, but upon the established law of *England*; and D'Ewes mentions particularly, that all privileges were equally insisted upon and enforced in the instance of the parliament of the 8 & 9 of Eliz. wherein he mentions that

D'Ewes, 121,
122.

“ Richard Onslow, esq. her majesty's solicitor
“ general, now speaker of the said house, did,
“ contrary to all former and latter presidents,
“ only petition her majesty in behalf of the
“ house for free access; and did very ignorantly
“ omit, or carelessly forget to mention those
“ two other antient and undoubted privileges
“ of the same house; viz. liberty of speech,
“ and freedom from arrests for themselves and

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“ followers; or else perhaps he thought and
 “ conceived that those said rights of the house
 “ were so evident and unquestionable, as they
 “ needed no further confirmation (*a*).”

Cro. Car. 181.

(*a*) In Hil. T. 5 Car. 1. a very memorable case occurred; an information was exhibited by the attorney general against sir John Elliot, Denzel Hollis, and Benjamin Valentine, charging them with conspiring together and uttering certain seditious words in parliament, and with assaulting sir John Fynch, the speaker, and forcibly detaining him in the chair, he endeavouring to get out of the same, in pursuance of the king's pleasure, which had been signified for the house to adjourn; and afterwards, when he was out of the chair, forcibly drawing him, and thrusting him into the same, &c. The defendants pleaded to the jurisdiction, but the court adjudged that they ought to answer, and they refusing, judgment was given against them, and they were severally punished by fine and imprisonment.

After the restoration, it being referred to a committee of the house of commons to examine and report upon the matter of speech in parliament; the house, upon their report, 12th & 23d Nov. 1667, and upon reading the stat. 4 H. 8. c. 8. (whereby all suits,

condemnations, executions, charges, and impositions put, or thereafter to be put upon *Richard Strode*, and every of his complices, that were of that parliament, or should be of any other thereafter, for any bill, speaking, or reasoning of any thing concerning the parliament, to be commenced and treated of, were to be void,) which was considered to be a general act, the house resolved (23d Nov.) that the judgment given “ 5 Car. against sir John
 “ Elliot, Denzel Hollis, and
 “ Benjamin Valentine, esqrs.
 “ in the king's bench, was
 “ an illegal judgment, and
 “ against the freedom of pri-
 “ vileges of parliament.” To this vote the concurrence of the lords was desired, and they agreed; at the same time a writ of error was brought in the house of lords to reverse the judgment above mentioned, and after the case had been there argued, that house (on the 15th April, 1668) reversed the decision of the court of king's bench. See these proceedings fully reported, together with the several resolutions of the commons thereupon, Cro. Car. 181, 182. 604 to 610.

9 Journ. 19. 25.

The most prominent privileges of the commons are those above noticed.

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The privilege of *speech* is declared by the statute 1 W. & M. st. 2. c. 2. § 1. article 9, as one of the liberties of the people, “that the
“ freedom of speech and debates and proceed-
“ ings in parliament ought not to be impeached
“ or questioned in any court or place out of
“ parliament.”

Privilege of
speech.

The privilege of *person* is as antient as Edward the Confessor, in whose laws we find this precept, “*ad synodos venientibus, sive summo-*
“ *niti sint, sive per se quid agendum habuerint,*
“ *sit summa pax**,” and in the old Gothic constitutions, “*extenditur hæc pax et securitas*
“ *ad quatuordecim dies, convocato regni se-*
“ *natu.*” This included formerly not only privilege from illegal violence, but also from legal arrests and seizures by process from the courts of law.

Privilege of
person.

1 Black. Com.
165.

To assault a member of either house, or his menial servants, is still a high contempt of par-

* See Hatsell's Precedents, vol. 1. *passim*, the subject of which volume is the privilege of parliament.

See a petition to the king by the commons, 5 H. 4. for protection of themselves and servants. Elsynge, 186.

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liament, and is there punished with the utmost severity.

5 H. 4. c. 6.

11 H. 6. c. 11.

Persons as-
saulting mem-
bers, or their
servants, now
punishable.

An occurrence of that sort produced the statute 5 H. 4. c. 6 (*a*). by which, and by the stat. 11 H. 6. c. 11. any person so offending, and not surrendering himself within certain times respectively limited by those statutes, is to pay double damages to the party grieved, and a fine and ransom to the king; and so, if he come and be found guilty.

Freedom from
arrest.

All other privileges which derogate from the common law in matters of civil right, are now at an end, save only as to the freedom of the member's person, which (by the privilege of parliament) is inviolable for forty days after every prorogation, and forty days before the next appointed meeting; which is now in effect as long as the parliament subsists, it seldom being prorogued for more than fourscore days at a time.

Member pro-
tected *redeundo*
after dissolu-
tion.

It does not appear that the privilege from arrest is limited to any precise time after disso-

(*a*) The recital of this stat. 5 H. 4. c. 6. runs thus, "Item, because that Richard Cheder, esq. which was come to this parliament with Thomas Broke, knight, one of the knights chosen to the same parliament for the

"county of Somerset, and
"menial servant with the
"said Thomas, was horribly
"beaten, wounded, blemish-
"ed, and maimed, by one
"John Salage, otherwise call-
"ed John Savage;" it is or-
dained, &c.

lution, but it was holden by all the judges that a member is intitled to privilege *redeundo* for a convenient time; and accordingly, where *Colonel Pitt*, being member for *Camelford*, was arrested on the 20th April, the proclamation for dissolution having been published on the 18th, he was discharged out of custody.

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2 Str. 985.

Tr. T. 7 Geo. 2.
K. B.See Prynne,
4. Parl. Writs,
68.

The other privileges, which obstructed the ordinary course of justice, were gradually restrained by the stats. 12 & 13 W. 3. c. 3. the 2 & 3 Ann. c. 18, and 11 Geo. 2. c. 24, and are now totally abolished by stat. 10 Geo. 3. c. 50. which enacts, that any action or suit may, at any time, be brought against any peer or member of parliament, their servants or any other person entitled to privilege of parliament (*a*), which shall not be impeached or delayed by pretence of any such privilege; except that (by § 2) the person of any member of the house of commons shall not thereby be subjected to any arrest or imprisonment upon any such suit or proceedings (*b*).

(10 Geo. 3. c.
50. § 6. extends
the stat. 12 &
13 W. 3. and
also that act to
Scotland.)

(*a*) The privilege of parliament in *Ireland* seems to have been nearly analogous to that in *England*, and to have undergone the same gradual restriction. See *Irish* acts, 3 Edw. 4. c. 1. 6 Ann. c. 8. 8 Geo. 1. c. 2. 1 Geo. 2. c. 8. 11 Geo. 2. c. 5. 33 Geo. 2. c. 14. 11 & 12 Geo. 3. c. 12. 15 & 16 Geo. 3. c. 30.

that the statutes respecting privilege of parliament are only collateral to the professed object of this treatise, has not inserted them at length, as tending unnecessarily to swell the work; he deems it necessary to mention this, because they have been copied, both by Mr. Troward and Mr. Orme.

(*b*) The author considering

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On non-ap-
pearance of
member of
parliament to
suit in equity,
his property
may be seques-
tered, &c.

And by the recent stat. of 47 Geo. 3. sess. 2. c. 40. when any bill or information shall be exhibited in a court of equity against a member of the house of commons, the person or persons exhibiting the same may, for want of appearance or answer, proceed to sequester the real and personal estate of such member, although no copy of the bill, or information, shall have been left with him, or at his house, or lodging, or last place of abode; such latter step having been hitherto necessary under the stat. 11 & 12 W. 3. c. 3. § 2.

Candidate not
free from ar-
rest during his
attendance on
the poll.

Election not
affected by ar-
rest of such
person.

Quere whether
election would
be affected if
such arrest
contrived by
opposite party.

It may not be improper here to mention, that a person who is a candidate at an election is by no means protected from arrest in consequence of his being so. Nor does an arrest of such person in any way affect the election of his opponent; the only case in which it could be supposed so to do, might be that of an arrest brought about by the contrivance of the opposite party, for the express purpose of harassing him during the election, in order to prevent his success.

2 Peck. 268.

London, 1804. The petitioner (sir *Watkin Lewes*) alledged by his petition (*inter alia*) "that some person or persons, to him the petitioner unknown, did, in order to prevent him from personally attending at the hustings, and

otherwise exerting himself in bringing forward the liverymen of the city, who were desirous of returning the petitioner as their representative to serve in the said parliament, prevail upon a man who had a legal demand on the petitioner, (but which demand had shortly then before been settled by giving him a security for the amount to his own satisfaction,) to cause the petitioner to be arrested and detained in custody; and by means of the petitioner's absence during Friday, the 9th of July," (the fourth day of the poll) "the other candidates had opportunities of bringing forward the voters in their favor, and thereby at the close of the poll on that day, the four persons returned as members to serve for the said city, had a considerable majority over the petitioner."

It appeared that sir W. L. had been arrested for £880, as he returned from the hustings after the close of the poll on the fourth day; but it did not appear that his arrest during the election was either malicious and unfounded, or procured by any person interested in opposing his success.

His counsel contended for a void election, and finally rested his case upon the privilege, which was said by him to belong to every candidate, during an election, to go and return

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from the hustings, without arrest by civil process; this privilege was said to be founded both upon the principle of law which protects all persons whose affairs require their attendance at a court of record; and upon the analogy to the privilege before mentioned (of the protection of a member *redcundo* after dissolution *.)

No case, however, or authority upon this subject, was cited.

2 Peck. 270.

The committee determined that the sitting members were duly elected; and that the petition was frivolous and vexatious †.

* The petitioner being a prisoner for debt in the Fleet at the time of the trial of his petition, the chairman, on the application of his counsel, issued a warrant for him to attend in person before the committee.

† The alterations with respect to convening the parliament in *England*, and with

respect to privilege of parliament, were also enacted in *Ireland* by corresponding statutes there, see the *Irish* statutes, 6 Ann. c. 8. 8 Geo. 1. c. 2. § 2. 1 Geo. 2. c. 7 & 8. 11 Geo. 2. c. 5. 33 Geo. 2. c. 14. 11 & 12 Geo. 3. c. 12. 21 & 22 Geo. 3. c. 16. § 8. 36 Geo. 3. c. 34. § 4.

CHAPTER II.

OF THE CONSTITUENT PARTS OF THE HOUSE OF COMMONS.

HAVING thus shortly touched upon the law respecting the holding of parliament, we shall now proceed to examine of what members of the house of commons is composed, and from whence they are chosen.

It is not consistent with the nature of this work to investigate very minutely the origin of representation*. It will be sufficient for our purpose to observe generally, that the privilege of sending representatives to parliament is claimed, either by prescription, as having been enjoyed from time immemorial, which is fixed by law to commence from the reign of Richard the first; by charter; by writ of summons; or by act of parliament†.

Without entering at present upon the consti-

* Mr. Serjeant Heywood, in his *Borough Elections*, chap. 1. has treated very fully of the history of representation, and has collected much curious and useful learning connected therewith.

† The acts by which the

right of representation is conferred upon particular places, will be found in the Appendix, this treatise comprising the whole statute law relating to elections. See appendix xlv. xlv. lii.

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tution of the particular places represented, or inquiring into their respective titles to this franchise, we shall state what in fact are the constituent parts of the house of commons.

There are in the house of commons six hundred and fifty-eight members, viz.

For England and Wales as at the Time of the Union with Scotland.

Two members for each of forty counties
in *England* - - - - - 80

Two members for each of fifteen cities
and towns in *England*, being * coun-
ties of themselves - - - - - 30

Two members for each of one hundred
and seventy-seven cities, boroughs, and
towns, in *England* - - - - - 354

One† member for each of five boroughs
in *England* - - - - - 5

Two members for each of the cinque
ports, and their dependencies - - - 16

Two members for each of the universi-
ties - - - - - 4

One member for each of twelve counties
in *Wales* - - - - - 12

One for each of twelve boroughs, &c. in

* These will be pointed
out in the chapter upon issu-
ing the writs.

† Abingdon, Banbury, Bewd-
ley, Higham Ferrers, and
Monmouth.

Wales, whereof two* are counties of themselves - - - 12

513

Scotland.

To this number, by the act of union with *Scotland* (5 Ann. c. 8.) thirty members were added for the counties and stewartries of *Scotland*† - 30
and fifteen for the royal burghs - 15

(See the 5 Ann. c. 8. in the appendix.)

45

Ireland.

By the act of union with *Ireland* (39 & 40 Geo. 3. c. 67.) two members were added for each of thirty-two counties in *Ireland* - - - 64

(See the 39 & 40 Geo. 3. in the appendix.)

Two for each of two cities, and one for each of thirty-one cities, towns, and boroughs‡ - - - 35

One for the university of *Dublin* - 1

100

Total 658

* *Caermarthen* and *Haverfordwest*.

† These are set forth in the Scot's act, which is made part of the act of union (5 Ann. c. 8) for which see appendix.

‡ These are enumerated in the Irish act, which is made part of the act of union, 39 & 40 Geo. 3. c. 67, for which see appendix.

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By the respective unions of *England* with *Scotland* and *Ireland*, the representation of the three kingdoms has been incorporated into one; each continuing to elect its own members in the same manner as it previously did for its own parliament, except where alterations have been by statute subsequently introduced.

The law respecting elections of members for *England*, will be first detailed under each head. The circumstances peculiar to elections for *Scotland*, or *Ireland*, where any such occur, will be noticed in their place.

CHAPTER III.

OF THE OATHS AND DECLARATION TO BE TAKEN
AND MADE BY MEMBERS OF PARLIAMENT.

SECTION 1. *Of the oaths and declaration in the case of members for England and Wales.*

SECTION 2. *Of the oaths and declaration in the case of members for Scotland.*

SECTION 3. *Of the oaths and declaration in the case of members for Ireland.*

WE have seen in what proportions the quota of members for *England* and *Wales*, and for *Scotland*, and *Ireland*, are by each respectively furnished. Our next inquiry is, what restrictions the law has imposed in the choice of the persons to be elected as representatives to parliament.

Before we enter minutely into this investigation, and into the particular ability or disability of any individual, it may be well to observe in the first instance, that as a test of his loyalty to his sovereign, and of his conformity to the established church, it is required of every member to take the oaths of supremacy, of alle-

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giance, and of abjuration, and to make and subscribe the declaration against transubstantiation.

The law upon this subject depends upon the following statutes.

(For lord
steward's depu-
tation see ap-
pendix iii.)

By the 5 Eliz. c. 1. § 16*. all members before they come into the parliament house are to take the oath of "supremacy" before the lord steward for the time being, or his deputy or deputies for that time to be appointed.

By the stat. 7 Jac. 1. c. 6 § 8. the oath of

* *The Stat. 5 Eliz. c. 1. An Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within her Dominions.*

§ 16 enacts, "That every person which hereafter shall be elected or appointed a knight, citizen, or burgess, or baron for any of the five ports, for any parliament or parliaments hereafter to be holden, shall from henceforth, before he shall enter into the parliament-house, or have any voice there, openly receive and pronounce the said oath," (i. e. the oath of supremacy in stat. 1 Eliz. c. 1. § 19) "before the lord steward for the time being, or his deputy or deputies for that time to be appointed: (2) and that he which shall enter into the parliament-house without taking the said oath, shall be deemed no knight, citizen, burgess, nor baron for that parliament, nor shall have any voice, but shall be to all intents, constructions, and purposes, as if he had never been returned, nor elected knight, citizen, burgess, or baron for that parliament, and shall suffer such pains and penalties, as if he had presumed to sit in the same without election, return, or authority."

allegiance is in like manner ordered to be taken by members before they come into the house.

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By the stat. 30 Car. 2. stat. 2*. every mem-

30 Car. 2. stat.
2. c. 1. § 1.

* *The Stat. 30 Car. 2. stat. 2. c. 2. An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament.*

"Forasmuch as divers good laws have been made for preventing the increase and danger of popery in this kingdom, which have not had the desired effects, by reason of the free access which popish recusants have had to his majesty's court, and by reason of the liberty which, of late, some of the recusants have had, and taken to sit and vote in parliament.

"§ 2. Wherefore, and for the safety of his majesty's royal person and government, Be it enacted, &c. that from and after the first day of December, which shall be in the year of our Lord God one thousand six hundred and seventy and eight, no person that now is or hereafter shall be a peer of this realm, or member of the house of peers, shall vote or make his proxy in the house of peers, or sit there during any debate in the

said house of peers; (2) nor any person that now is, or hereafter shall be a member of the house of commons, shall vote in the house of commons, or sit there during any debate in the said house of commons after their speaker is chosen; (3) until such peer or member shall, from time to time respectively, and in manner following, first take the several oaths of allegiance and supremacy, and make, subscribe, and audibly repeat this declaration following:

(The declaration contained in § 3. is to be found in the appendix i. it is therefore not inserted here.)

"§ 4. Which said oaths and declaration shall be in this and every succeeding parliament, solemnly and publicly made and subscribed betwixt the hours of nine in the morning and four in the afternoon, by every such peer and member of the house of peers, at the table in the middle of the said house, before he take his place in the said house of peers, and whilst a full house of peers is there with their speaker in his place; (2) and by every such

No person to be a member without taking the oaths.

The time and place of taking the oaths, and making and subscribing the declaration.

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ber is also to take the oaths of allegiance and supremacy. With respect to these oaths new

30 Car. 2. stat.
2. c. 1.

“ member of the house of
“ commons, at the table in
“ the middle of the said
“ house, and whilst a full
“ house of commons is there
“ duly sitting with their
“ speaker in his chair; (3)
“ and that the same be done
“ in either house, in such
“ like order or method as
“ each house is called over
“ by respectively.

“ § 5. And be it further
“ enacted, that from and after
“ the said first day of De-
“ cember, every peer of this
“ realm, and member of the
“ house of peers, and every
“ peer of the kingdom of
“ *Scotland*, or of the kingdom
“ of *Ireland*, being of the
“ age of one-and-twenty years
“ or upwards, not having
“ taken the said oaths, and
“ made and subscribed the
“ said declaration; (2) and
“ every member of the said
“ house of commons not hav-
“ ing as aforesaid taken the
“ said oaths, and made and
“ subscribed the said decla-
“ ration; (3) and every per-
“ son now or hereafter con-
“ victed of popish recusancy,
“ (4) who hereafter shall at
“ any time, after the said first
“ day of December, come
“ advisedly into or remain in
“ the presence of the king's
“ majesty, or queen's ma-
“ jesty, or shall come into
“ the court or house where

“ they, or any of them re-
“ side, as well during the
“ reign of his present ma-
“ jesty (whose life God long
“ preserve) as during the
“ reigns of any of his royal
“ successors, kings, or queens
“ of England; (5) shall in-
“ cur and suffer all the pains,
“ penalties, forfeitures, and
“ disabilities, in this act men-
“ tioned or contained; (6)
“ unless such peer, member,
“ or person so convicted, do
“ respectively, in the next
“ term after such his coming
“ or remaining, take the said
“ oaths, and make and sub-
“ scribe the said declaration,
“ in his majesty's high court
“ of chancery, between the
“ hours of nine and twelve in
“ the forenoon.

“ § 6. And be it further
“ enacted, by the authority
“ aforesaid, that if any per-
“ son that now is, or here-
“ after shall be a peer of this
“ realm, or member of the
“ house of peers, or member
“ of the house of commons,
“ shall presume to do any
“ thing contrary to this act,
“ or shall offend in any of the
“ cases aforesaid; that then
“ every such peer and mem-
“ ber so offending, shall from
“ thenceforth be deemed and
“ adjudged a popish recusant
“ convict to all intents and
“ purposes whatsoever; (2)
“ and shall forfeit and suffer

Members of
parliament not
swearing and
declaring as
aforesaid, and
recusant con-
vict forbidden
the king's or
queen's pre-
sence.

forms were given by the stat. 1 W. & M. sess. 1. c. 1. § 6, 7. and they were again altered by the

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“ as a popish recusant convicted; (3) and shall be disabled to hold or execute any office or place of profit or trust, civil or military, in any of his majesty’s realms of *England* or *Ireland*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, or in any of his majesty’s islands, or foreign plantations to the said realms belonging; (4) and shall be disabled from thenceforth to sit or vote in either house of parliament, or make a proxy in the house of peers, (5) or to sue or use any action, bill, plaint, or information in course of law, or to prosecute any suit in any court of equity, (6) or to be guardian of any child, or executor or administrator of any person, (7) or capable of any legacy or deed of gift, (8) and shall forfeit, for every wilful offence against this act, the sum of five hundred pounds, to be recovered and received by him or them that shall sue for the same, and to be prosecuted by any action of debt, suit, bill, plaint, or information in any of his majesty’s courts at *Westminster*, wherein no essoin, protection, or wager of law shall lie.

“ § 7. And be it further

“ enacted, by the authority 30 Car. 2. stat. 2. c. 1.
“ aforesaid, that from the said first day of December, it shall and may be lawful to and for the house of peers, and house of commons, or either of them respectively, as often as they, or either of them, shall see occasion, either in this present parliament, or any other hereafter to be holden, to order and cause all, or any of the members of their respective houses of parliament, openly in their respective houses of parliament, to take the said oaths, and to make and subscribe the said declaration, at such times, and in such manner, as they shall appoint. (2) And if any peer shall, contrary to such order made by their said house, wilfully presume to sit therein, without taking the said oath, and subscribing the said declaration, according to the said order, every such peer or member of the house of peers, so presuming to sit, shall be adjudged, and is hereby declared, to be incapable and disabled in law to all intents and purposes whatsoever, to sit in the said house of peers, and give any voice therein, either by proxy or otherwise howsoever, during that parlia-

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*For the oath of
allegiance see
Appendix xxv.
Oath of supre-
macy, ib. xxvi.
Declaration
against transub-
stantiation, Ap-
pendix i.*

stat. 1 Geo. 1. stat. 2. c. 13. § 1. upon which
latter act they now depend.

By the above-mentioned statutes of 30 Car. 2.
stat. 2. c. 1. § 1. every member is further re-
quired to make and subscribe the declaration
against transubstantiation.

30 Car. 2. stat.
2. c. 1.

“ment: (3) and if any mem-
“ber or members of the house
“of commons shall, contrary
“to such order made by their
“house, wilfully presume to
“sit therein, without taking
“the said oaths, and making
“and subscribing the said
“declaration, every such
“member or members of the
“house of commons, so pre-
“suming to sit, shall be ad-
“judged, and is hereby de-
“clared to be incapable and
“disabled in law to all in-
“tents and purposes what-
“soever to sit in the said
“house of commons, or give
“any voice therein during
“that parliament.

“§ 8. And be it enacted,
“that in every case where
“any member, or members
“of the house of commons
“shall, by virtue of this act,
“be disabled to sit or vote in
“the house of commons, then
“and in every such case,
“without any further convic-
“tion or other proceedings
“against such member or
“members, the place or
“places for which they or

“any of them were elected,
“is hereby declared void; (2)
“and a new writ or writs
“shall issue out of the high
“court of chancery by war-
“rant or warrants from the
“speaker of the house of
“commons for the time
“being, and by order of the
“said house, for the election
“of a new member or mem-
“bers to serve in the house
“of commons, in the place
“or places of such member
“or members so disabled, to
“all intents and purposes, as
“if such member or members
“were naturally dead.”

By § 11. During the time
of taking the oaths, &c. all
other matters and proceed-
ings in the house are to cease;
and the oaths, &c. are to be
entered and filed by the clerk
of the house.

See § 13 of the act, by
which persons offending
against the act, and after-
wards taking the oaths, are,
with certain restrictions, freed
from all disabilities and in-
capacities, incurred by such
offence.

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These oaths are to be taken, and the declaration to be made between the hours of nine in the morning, and four in the afternoon, at the table in the middle of the house of commons, while the house is sitting, with the speaker in the chair; (§ 4) all other business in the house ceasing for the time (§ 5.) And by the same act, (§ 5, 6, & 7) members not taking the said oaths and declaration are disabled from sitting or voting in parliament. (see ante, 31, 32, 33, 34, n.)

In addition to the requisition that members should, before they sit or vote in the house, take the oaths, and make and subscribe the declaration in that act, it is also provided by § 7, (see ante, 33 and 34, n.) that either house may order any of their members so to do, as often as they shall see occasion; and members, contrary to such order, presuming to sit without taking such oaths, and making and subscribing the declaration, are declared to be incapable of sitting or voting during that parliament, and by § 8, new writs are thereupon to issue to elect new members for the places they represent.

Every member is likewise required, by the stat. 1 Geo. 1. stat. 2. c. 13. § 16(a). to take the

(a) The stat. 1 Geo. 1. stat. 2. c. 13. § 16 enacts, “ that “ the year of our Lord one thousand seven hundred and “ from and after the twenty- “ fifteen, no person that now “ ninth day of September, in “ is, or hereafter shall be a

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abjuration oath, until he has done which, he is not capable of voting, and (by § 17) (a) if he presume to vote without having so done, he is liable to the several disabilities of the act therein enumerated, and also to a penalty of £500.

“ peer of this realm, or mem-
 “ ber of the house of peers,
 “ shall vote, or make his proxy
 “ in the house of peers, or
 “ sit there, during any debate
 “ in the said house of peers;
 “ nor any person that now is,
 “ or hereafter shall be a mem-
 “ ber of the house of com-
 “ mons, shall vote in the
 “ house of commons, or sit
 “ there during any debate in
 “ the said house of commons,
 “ after their speaker is chosen;
 “ until such peer or member
 “ shall, from time to time re-
 “ spectively take the abjura-
 “ tion oath,” (therein) “ afore-
 “ said, instead of the oath of
 “ abjuration, which before by
 “ law ought to have been
 “ taken, in such manner, and
 “ together with such other
 “ oaths, and declaration
 “ against transubstantiation,
 “ as the said former oath of
 “ abjuration ought to have
 “ been taken;”

(a) § 17 Further enacts, “ that
 “ if any person that now is or
 “ hereafter shall be a peer of
 “ this realm, or member of
 “ the house of peers, or mem-
 “ ber of the house of com-
 “ mons, in this or any suc-
 “ ceeding parliament, and
 “ after the said twenty-ninth

“ day of September, presume
 “ to vote, or make his proxy,
 “ not having taken the said
 “ oath, and subscribed the
 “ same, as aforesaid, every
 “ such peer or member so of-
 “ fending shall be disabled to
 “ sue, or use any action, bill,
 “ plaint, or information in
 “ any court of law, or to
 “ prosecute any suit in any
 “ court of equity, or to be
 “ guardian of any child, or
 “ executor, or administrator
 “ of any person, or be capa-
 “ ble of any legacy, or deed
 “ of gift, or to be in any office
 “ within this realm of *Great*
 “ *Britain*, or to vote at any
 “ election for members to
 “ serve in parliament, and
 “ shall forfeit the sum of five
 “ hundred pounds, to be re-
 “ covered by him or them
 “ that shall sue for the same,
 “ to be prosecuted by action
 “ of debt, suit, bill, plaint,
 “ or information, in any of
 “ his majesty's courts at *West-*
 “ *minster*, wherein no essoin,
 “ protection, or wager of law
 “ shall lie, or any more than
 “ one imparlance, and by way
 “ of summary complaint be-
 “ fore the court or sessions, or
 “ prosecution before the court
 “ of justiciary in *Scotland*.”

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Upon the death of the pretender, the form of the abjuration oath was altered by the statute 6 Geo. 3. c. 53. which, after reciting the above act of 1 Geo. 1. c. 13. and that, "by the death of the person who pretended to be prince of Wales during the life of the late king James," &c. "it is become necessary to make some alteration in the oath of abjuration," &c. sets forth a new form (a.)

(For the oath of abjuration see Appendix xxvii.)

SECTION 2. *Of the oath and declaration in the case of members for places in Scotland.*

THE oaths and declaration required of members for *Scotland* are the same, as those above

(a) The stat. 6 Geo. 3. c. 53. § 1. at the same time, enacts, "that all and every person and persons who are enjoined and required to administer, take, or subscribe the oath of abjuration, and the assurance in the said above-mentioned acts contained, shall respectively administer, take, and subscribe, the oath of abjuration, and subscribe the assurance according to the form therein set down and prescribed, in such courts, within such time limited, in such manner, and with "due observance of the same requisites, and with benefit of the same savings, provisions, and indemnities, as by the said acts above-mentioned," (*i. e.* 1 Geo. 1. c. 13. and 5 Geo. 1. c. 29) "or by any other acts, or any part of them now subsisting, are directed and enacted; and in case of neglect or refusal he or they shall be subject and liable to the same penalties and disabilities as by the laws and statutes aforesaid are enacted."

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(For these
statutes and
the oath see
Appendix.)

mentioned, except that by the stat. 16 Geo. 2. c. 11. § 10. every such member, if he were not present at the election, before he takes his seat in the house of commons, is to take the *trust oath* in the act of 7 Geo. 2. c. 16. § 2. before the lord steward of his majesty's household, or any person or persons authorized by him for that end; and if any member elected in his absence shall neglect or refuse to take such oath, his election is to be void.

SECTION 3. *Of the oaths and declaration in the case of members for Ireland.*

BY the act of union 39 & 40 Geo. 3. c. 67. article 4. the law which respects the members for *Ireland* is the same as that above mentioned in the first section of this chapter.

CHAPTER IV.

OF THE LANDED QUALIFICATION REQUIRED FOR
PARLIAMENT.

SECTION 1. *Of the nature and amount of the qualification required, and where it may be situated.*

SECTION 2. *Qualification of candidate, in what cases to be sworn to before the return.*

SECTION 3. *Of delivering in, and swearing to the qualification in the house of commons.*

SECTION 4. *Of questioning the qualification of, a member, a petitioner, or of a person in whose favor electors petition.*

SECTION 5. *Of default in respect of qualification, of members, of petitioners, or of persons in whose favor petitions are pending.*

SECTION 6. *Of the sufficiency of the qualification, as depending upon value or title, and of the particularity of the description required.*

SECTION 7. *Scotland.*

SECTION 8. *Ireland.*

THE law requires that every member of the house of commons (with some particular exceptions) should possess a landed estate to a certain annual amount, a regulation introduced in the reign of queen Anne to counteract the ascendancy, which the boroughs had obtained over

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the counties, by obliging the trading interest to make choice of landed men.

We shall now explain the landed qualification required, first pointing out who are the excepted persons to whom the law does not apply, who therefore need have no such qualification.

Excepted persons, 9 Ann. c. 5. § 2 & 3. 33 Geo. 2. c. 20. § 3.

These are the eldest sons of peers, or lords of parliament, or of persons qualified to serve as knights of the shire; and the members for either of the universities of *England*.

Qualification to what amount.

All other English members must, by the statute 9 Anne, c. 5. § 1. (*a*) be qualified to the

(*a*) *The stat. 9 Ann. c. 5. An act for securing the freedom of parliament by the farther qualifying the members to sit in the house of commons.*

“ For the better preserving
“ the constitution and free-
“ dom of parliament,” be it
enacted and declared, &c.
“ that from and after the de-
“ termination of this present
“ parliament, no person shall
“ be capable to sit or vote, as
“ a member of the house of
“ commons for any county,
“ city, borough, or cinque
“ port, within that part of
“ *Great Britain* called *Eng-*
“ *land*, the dominion of *Wales*,
“ and town of *Berwick-upon-*

“ *Tweed*, who shall not have
“ an estate, freehold, or copy-
“ hold, for his own life, or
“ for some greater estate
“ either in law or equity, to
“ and for his own use and
“ benefit of, or in lands, tene-
“ ments, or hereditaments,
“ over and above what will
“ satisfy and clear all incum-
“ brances that may affect the
“ same, lying or being within
“ that part of *Great Britain*
“ called *England*, the dominion
“ of *Wales*, and town of *Ber-*
“ *wick-upon-Tweed*, of the re-
“ spective annual value here-
“ after limited, viz. the annual
“ value of six hundred pounds
“ above reprises for every
“ knight of a shire, and the

amount, if a knight of the shire, of £600, if a member for any other place, of £300.

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“ annual value of three hundred pounds above reprises, for every citizen, burgess, or baron of the cinque ports; and that if any person who shall be elected, or returned to serve in any parliament as a knight of a shire, or as a citizen, burgess, or baron of the cinque ports, shall not, at the time of such election and return, be seized of or entitled to such an estate, in lands, tenements, or hereditaments, as for such knight, or for such citizen, burgess, or baron respectively, is thereinbefore required or limited, such election and return shall be void.”

§ 2. “ Provided always, that nothing in this act contained shall extend to make the eldest son, or heir apparent of any peer or lord of parliament, or of any person qualified by this act to serve as knight of a shire, incapable of being elected and returned, and sitting and voting as a member of the house of commons in any parliament.”

§ 3. “ Provided always, that nothing in this act contained shall extend, or be construed to extend, to either of the universities in that part of *Great Britain* called *England*, but that they and each of them may elect and

return members to represent them in parliament, as heretofore they have done; any thing herein contained to the contrary notwithstanding.”

§ 4. “ Provided always, and be it enacted,” &c. “ that no person whatsoever shall be construed to be qualified to sit in the house of commons, within the meaning of this act, by virtue of any mortgage whatsoever, whereof the equity of redemption is in any other person or persons, unless the mortgagee shall have been in possession of the mortgaged premises, for the space of seven years before the time of his election; any thing herein contained to the contrary notwithstanding.”

§ 5. “ Provided always, and it is hereby enacted,” &c. “ that every person, (except as aforesaid) who from and after the determination of this present parliament shall appear as a candidate, or shall by himself, or any others, be proposed to be elected to serve as a member for the house of commons, for any county, city, borough, or cinque port, in *England, Wales, or Berwick-upon-Tweed*, shall, and he is hereby enjoined and required, upon reasonable re-

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Qualification
consisting in
what estate.

This must consist of an estate, freehold, or copyhold, for the life of the person claiming to

“quest to him to be made (at
“the time of such election,
“or before the day to be pre-
“fixed in the writ of sum-
“mons for the meeting of
“the parliament) by any
“other person who shall
“stand candidate at such
“election, or by any two or
“more persons having right
“to vote at such election,
“take a corporal oath, in the
“form or to the effect follow-
“ing:

“I, *A. B.* do swear, that I
“truly and *bonâ fide* have
“such an estate in law or
“equity, to and for my own
“use and benefit, of or in
“lands, tenements, or here-
“ditaments, (over and above
“what will satisfy and clear
“all incumbrances that may
“affect the same) of the an-
“nual value of six hundred
“pounds above reprises, as
“doth qualify me to be elect-
“ed and returned to serve as
“a member for the county of
“ according to the
“tenor and true meaning of
“the act of parliament in
“that behalf: and that my
“said lands, tenements, or
“hereditaments, are lying or
“being within the parish,
“township, or precinct of
“ or, in the several
“parishes, townships, or pre-
“cincts of in the
“county of or in the

“several counties of
“ (as the case may be).”

§ 6. “And in case such
“candidate or person is to
“serve for any city, borough,
“or cinque port, then the
“said oath shall relate only
“to the said value of three
“hundred pounds *per annum*,
“and be taken to the same
“effect, *mutatis mutandis*, as
“is hereby prescribed for the
“oath of a person to serve
“as a member for such coun-
“ty as aforesaid.”

§ 7. “And it is hereby en-
“acted, that the respective
“oaths aforesaid, shall and
“may be administered by the
“sheriff or under-sheriff for
“any such county as afore-
“said, or by the mayor, bai-
“liff, or other officer or offi-
“cers, for any city, borough,
“or port, to whom it shall
“appertain to take the poll,
“or make the return, at such
“election for the same coun-
“ty, borough, or port re-
“spectively, or by any two
“or more justices of the
“peace within *England*,
“*Wales*, and *Berwick-upon-*
“*Tweed*; and the said sheriff,
“mayor, bailiff, or other
“officers, and the said jus-
“tices of the peace respec-
“tively, who shall administer
“the said oaths, are hereby
“required to certify the tak-
“ing thereof into her ma-

be qualified; or of some greater estate, either in law or equity, of the annual value respectively above mentioned. (9 Ann. c. 5. § 1.)

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(see ante, 40, n.)

Of which estate the member must be in possession both at the time of his election and return; otherwise his election and return will, by 9 Ann. c. 5. § 1. be void.

Time of possession of estate.

(see ante, 41, n.)

If the qualification consists in a mortgage, whereof the equity of redemption is in any other than the person asserting the qualification, the mortgagee cannot derive a qualification therefrom, unless he have been in possession for

Qualification by mortgage.

“jesty’s high court of chancery, or the queen’s bench, within three months after the taking the same, under the penalty of forfeiting the sum of one hundred pounds, to wit, one moiety thereof to the queen, and the other moiety thereof to such person or persons as will sue for the same, to be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of her majesty’s courts of record at *Westminster*; and if any of the said candidates, or persons proposed to be elected as aforesaid, shall wilfully refuse, upon reasonable request to be made at the time of the election, or at any time before the day upon which

“such parliament, by the writ of summons, is to meet, to take the oath hereby required, then election and return of such candidate or person shall be void.”

§ 8. “And it is hereby enacted, that no fee or reward shall be taken for administering any such oath, or making, receiving, or filing the certificate thereof, except one shilling for administering the oath, and two shillings for making the certificate, and two shillings for receiving and filing the same, under the penalty of twenty pounds, to be forfeited by the offender, and to be recovered and divided as aforesaid.”

Sect. 1. seven years before the time of his election. (9
 Ann. c. 5. § 4.)
 (see ante, 41, n.)

Qualification,
 where to be.

(for the 41 Geo.
 3. c. 101. § 23.
 see post, § 8. of
 this chapter.)

By the stat. 9 Ann. c. 5. § 1. the qualification was required to be in *England, Wales*, or the town of *Berwick-upon-Tweed*, but by an act of the 41 Geo. 3. c. 101. § 23. which passed upon the union with *Ireland*, the qualification may now either be within the above-mentioned limits specified in the statute of Anne, or in *Ireland*.

SECTION 2. *Qualification of candidate, in what cases to be sworn to before the return.*

Candidate, on
 reasonable re-
 quest of an-
 other candi-
 date, or of two
 electors, to
 swear to his
 qualification.
 (see ante, 42
 and 43, n.)

BY virtue of the same statute of the 9 Ann, c. 5. § 5. any candidate at an election may be required to take an oath to his qualification, upon reasonable request made to him by any other candidate, or by any two electors; which oath is to be taken either at the time of the election, or before the day appointed for the meeting of parliament; and by § 7 and 8 may be administered by the returning officer, or by two or more justices of the peace, who are, under a penalty of £100, to certify the same into the courts of chancery, or king's bench, within three months.

By the same clause, if any candidate, upon such request, shall wilfully refuse to take such oath, his election and return will be void.

SECTION 3. *Of delivering in, and swearing to the qualification in the house of commons.*

THE stat. 33 Geo. 2. c. 20. § 1. (a) after reciting the first part of the 9 Ann. c. 5. § 1, in order to enforce and render that act more effec-

Members before voting, &c. to deliver in schedules of their qualifications.

(a) The stat. 33 Geo. 2. c. 20. "An Act to enforce and render more effectual the laws relating to the qualification of Members to sit in the House of Commons." [A.D. 1759.]

"Whereas, by an act passed in the ninth year of her late majesty queen Anne, intituled, *An Act for securing the freedom of parliament, by the farther qualifying the members to sit in the house of commons*, it was enacted, that no person should be capable to sit or vote, as a member of the house of commons for any county, city, borough, or cinque port, within that part of Great Britain called England, the dominion of Wales, and town of Berwick-upon-Tweed, who shall not have an estate, freehold, or copyhold, for his own life, or for some greater estate either in law or equity, to and for his own use and benefit, of or in, lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that might affect the same, lying or being within that part of Great Britain called England, the dominion of Wales, and

town of Berwick-upon-Tweed, of the respective annual value therein limited, viz. the annual value of six hundred pounds above reprises for every knight of a shire, and the annual value of three hundred pounds above reprises, for every citizen, burgess, or baron of the cinque ports." "Now, in order to enforce and render the said act more effectual, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords, spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the determination of this present parliament, every person, except as is herein after excepted, who shall be elected a member of the house of commons shall, before he presumes to vote in the house of commons, or sit there during any debate in the said house of commons, after the speaker is chosen, produce and deliver in to the clerk of the said house, at the table in the middle of the said

Sect. 3.

tual, requires that every person to be elected (with some few exceptions under § 3,) shall, before he

“ house, and whilst the house
 “ of commons is there duly
 “ sitting, with their speaker
 “ in the chair of the said
 “ house, a paper or account,
 “ signed by every such
 “ member, containing the
 “ name or names of the
 “ parish, township or pre-
 “ cinct, or of the several
 “ parishes, townships, or pre-
 “ cincts, and also of the
 “ county, or of the several
 “ counties, in which the lands,
 “ tenements, or heredita-
 “ ments do lie, whereby he
 “ makes out his qualification,
 “ declaring the same to be
 “ of the annual value of six
 “ hundred pounds above re-
 “ prises, if a knight of the
 “ shire; and of the annual
 “ value of three hundred
 “ pounds above reprises, if a
 “ citizen, burgess, or baron
 “ of the cinque ports; and
 “ shall also, at the same time,
 “ take and subscribe the fol-
 “ lowing oath, *videlicet*:

“ I, A. B. do swear, that I
 “ truly and bonâ fide have
 “ such an estate in law or
 “ equity, and of such value, to
 “ and for my own use and bene-
 “ fit, of or in lands, tenements,
 “ or hereditaments, over and
 “ above what will satisfy and
 “ clear all incumbrances that
 “ may affect the same, as doth
 “ qualify me to be elected and
 “ returned to serve as a mem-
 “ ber for the place I am re-
 “ turned for, according to the
 “ tenor and true meaning of
 “ the acts of parliament in that

“ behalf; and that such lands,
 “ tenements, or hereditaments,
 “ do lie as described in the
 “ paper or account signed by
 “ me, and now delivered to the
 “ clerk of the house of commons.

“ So help me God.”

“ And the said house of
 “ commons is hereby im-
 “ powered and required to
 “ administer the said oath
 “ and subscription, accord-
 “ ing to the directions of this
 “ act, as occasion shall be,
 “ from time to time, to every
 “ person duly demanding the
 “ same, immediately after
 “ such person shall have
 “ taken the oaths of allegi-
 “ ance, supremacy, and ab-
 “ juration, at the said table:
 “ and the said oath and sub-
 “ scription herein before di-
 “ rected to be taken and
 “ made, shall be entered in
 “ a parchment roll, to be
 “ provided for that purpose
 “ by the clerk of the house
 “ of commons; and the said
 “ papers or accounts, so
 “ signed and delivered in to
 “ the said clerk as aforesaid,
 “ shall be filed and carefully
 “ kept by him.”

§ 2. “ And be it further
 “ enacted, by the authority
 “ aforesaid, that if any per-
 “ son, who shall be elected
 “ to serve in any future par-
 “ liament as knight of a
 “ shire, or as a citizen, bur-
 “ gess, or baron of the cinque
 “ ports, shall presume to sit
 “ or vote as aforesaid as a
 “ member of the house of

presumes to vote in the house, or sit there during any debate, produce and deliver in, in manner therein directed, a paper or account signed by him, containing the particulars of his qualification, declaring the same to be of the annual value of £600 above reprises, if a knight of the shire; and of the annual value of £300 above reprises, if a citizen, burgess, or baron of the cinque ports; and shall also, at the same time, take and subscribe the oath in the act, which is to be administered and taken as therein directed: The oath and the subscription thereto, being to be entered in a parchment roll, to be provided by the clerk of the house; and the papers or accounts so signed and delivered in to be filed and kept by such clerk.

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(For a schedule of a member's qualification, see App. ii.)

And to take and subscribe the oath.

Qualification and oath, &c. to be filed.

The same statute, by § 2, makes the election of any member, presuming to sit or vote before he has delivered in such paper or account, and taken and subscribed such oath, or not being qualified according to these statutes, void.

Election of members sitting and before delivering in qualification, and taking and subscribing oath, or not qualified, void.

The exceptions alluded to, wherein landed

“commons, before he has
“delivered in such paper or
“account, and taken and
“subscribed such oath as
“aforesaid, or shall not be
“qualified according to the
“true intent and meaning
“of the said recited act, and
“of this act; his election
“shall be, and is hereby de-
“clared to be void; and a
“new writ shall be issued to
“elect another member in
“the said person's room.”

§ 3. “Provided always,
“that nothing in this act
“contained shall extend to
“the eldest son, or heir ap-
“parent, of any peer or lord
“of parliament, or of any
“person qualified to serve
“as a knight of a shire, or
“to the members for either
“of the universities in that
“part of *Great Britain* called
“*England*, or to the mem-
“bers for that part of *Great*
“*Britain* called *Scotland*.”

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Persons of
whom no qua-
lification re-
quired.

qualifications are not required, are the cases,
1. of eldest sons, or heirs apparent of peers or
lords of parliament; 2. of sons or heirs apparent
of persons qualified to serve as knights of shires;
3. of members for either of the universities in
England; and, 4. of members for places in *Scot-*
land.

SECTION 4. *Of questioning the qualification of a mem-
ber, a petitioner (a), or of a person in whose favor
electors petition.*

NOT long after the passing of the 9 Ann.
c. 5. it came to be a question, whether the qua-
lification of a person returned, which had been
by him sworn to, in compliance with that sta-
tute, could afterwards be questioned. In con-
sequence of this, the house, in order to give the
fullest effect to the existing law, on the 23d
March 1717, passed the following resolutions,
which, on the 21st Nov. following, were declared
to be standing orders.

18 Journ. 20.
629.

Orders of the
house relating
to qualifica-
tion.

1st. It was resolved:—"That notwithstand-
"ing the oath taken by any candidate at, or
"after, any election, his qualification may after-
"wards be examined into."

2dly. "That the person whose qualification
"is expressly objected to in any petition re-
"lating to his election, shall, within fifteen

(a) See the case of *Sandwich*, *post*, part 3.

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“ days after the petition read, give to the clerk
 “ of the house of commons, a paper, signed
 “ by himself, containing a rental, or particular,
 “ of the lands, tenements, and hereditaments,
 “ whereby he makes out his qualification; of
 “ which any person concerned may have a
 “ copy.”

3dly. “ That of such lands, tenements, and
 “ hereditaments, whereof the party hath not
 “ been in possession for three years before the
 “ election, he shall also insert in the same
 “ paper from what person, and by what con-
 “ veyance or act in law, he claims and derives
 “ the same; and also the consideration, if any,
 “ paid; and the names and places of abode, of
 “ the witnesses to such conveyance and pay-
 “ ment.”

18 Journ. 629.

The object of the above orders was to pro-
 mote the examination into the qualifications of
 sitting members; but as persons, who had not
 legal qualifications, might occasionally become
 petitioners, and in such cases if the decision
 should be in their favor, yet such persons, by
 reason of their want of qualification, might not
 be capable of sitting; to prevent this incon-
 venience they at the same time, 4thly, resolved:

Qualification
 of petitioners
 how question-
 ed.

“ That if any sitting member shall think fit

Sect. 4.

18 Journ. 629.

“ to question the qualification of a petitioner,
 “ he shall, within fifteen days after the petition
 “ read, leave * notice thereof in writing, with
 “ the clerk of the house of commons; and the
 “ petitioner shall, in such case, within fifteen
 “ days after such notice, leave with the said
 “ clerk of the house, the like account in writ-
 “ ing of his qualification, as is required from a
 “ sitting member.”

Qualification
 of persons in
 whose favor
 electors peti-
 tion, how
 questioned.

These regulations were still open to evasion by unsuccessful candidates declining to petition themselves, but procuring electors to petition in their favor.

To meet this latter case the house, on the 6th Feb. 1734, resolved,

32 Journ. 355,
 356.

“ That on the petition of any elector or
 “ electors for any county, city, or place, send-
 “ ing members to parliament, complaining of
 “ an undue election, and return; and alledging
 “ that some other person was duly elected, and
 “ ought to have been returned; the sitting
 “ member so complained of may demand and
 “ examine into the qualification of such person
 “ so alledged to be duly elected, in the same
 “ manner as if such person had himself peti-
 “ tioned;” and the same resolution was declared
 to be a standing order of the house.

* For a form of such notice see Appendix ii.

SECTION 5. *Of default in respect of qualification, of members, of petitioners, or of persons in whose favor petitions are pending.*

ALTHOUGH a person returned for parliament should be really possessed of the qualification required by law, yet if he refuse or neglect to swear to the same according to the statutes, or if he omit to comply with the before-mentioned orders of the 23d March, and 21st Nov. 1717, his election will be avoided (*a*). So in the case of a person in whose favor a petition is pending, upon non-compliance, either with the third standing order of the above date, or with that of 6th Feb. 1734, all further proceedings upon the petition will be discharged.

1. As to default of members.

Malden, 20th May, 1715. The election of *serjeant Comyn* was avoided, he having, at the late election, “wilfully refused to take the oath of qualification, as is directed by an act of parliament of the 9th year of the late queen,” &c. (c. 5.) “though duly required so to do, and not

18 Journ. 129.
Qualification not sworn to at election, or before meeting of parliament.

(*a*) *Gloucestershire*, 31st May, 1810. The election and return of the sitting member was petitioned against by certain electors, upon the ground that he had not sworn to and delivered in any qualification, he having stated himself to be heir apparent to the earl of Berkeley. The petition denied his legitimacy, and therefore alledged that his election was void. The house after debate, 5th June, rejected the petition. See the Journals of the days mentioned.

Sect. 5.
 (see post,
 notice of dis-
 qualification.)

“ having at any time before the meeting of that
 “ parliament taken the said oath.” And the
 petitioner was seated.

21 Journ. 574.

Weymouth, 7th May, 1730. The counsel for *Mr. Ward*, the petitioner, insisted, that *Mr. Betts*, the sitting member, not having complied with the act of parliament, which requires an oath of qualification, nor with the standing order, which requires a particular in writing to be left with the clerk of the house, his election was therefore void; and that by consequence the petitioner, having the next majority on the poll, was duly elected.

The counsel for *Mr. Betts* admitted that his qualification was not sworn to, nor a particular of it delivered, but they insisted that the electors, not being apprized of this, ought to have an opportunity of making another choice.

The house resolved that *Mr. Betts* was not duly elected, and a new writ was ordered.

1 Lud. 415.
 Sitting mem-
 ber, whose
 qualification
 was questioned
 in the peti-
 tion; not hav-
 ing delivered
 in a particular
 of qualifica-
 tion, as re-
 quired by the

Colchester. The insufficiency of the qualifi-
 cation of *Mr. Potter*, at the time of the elec-
 tion, was alledged in the petition upon the
 ground of his having before that time become
 bankrupt, and an assignment of all his estate
 and effects having been made for the benefit of
 his creditors.

It appeared that *Mr. Potter* had obtained his certificate; in consequence of which, the ground of want of qualification was abandoned. The case then turned upon the following question:

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order of 17th
Nov. 1717:
his election
void, though
he had deliver-
ed in his qua-
lification at
the election,
and had not
since taken his
seat.

At the election, *Mr. Potter* was formally called upon to swear to his qualification, and he delivered in a paper, containing an affidavit of a sufficient estate sworn before the mayor.

Mr. Potter had not, at the time when the case came on, taken his seat in the house, nor delivered in the particular of his qualification required by the stat. 33 Geo. 2. and the second standing order above recited. Upon which ground it was contended, that he could not retain his seat. (ante, 45. 48.)

On his part it was contended, that he had complied with the statute of Ann. and that the stat. of Geo. 2. did not apply to him, that statute only laying down a rule for members *when they take their seats*, and he not having taken his seat.

It was further contended, that supposing 1 Lud. 434.
him to have disobeyed the standing order, the consequence insisted upon by the petitioner would not follow; that the house cannot make

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a legal disqualification, that the legislature alone can do that.

The committee having resolved that *C. Potter, esq.* had not complied with the standing order of the 21st Nov. 1717, which requires, &c. (as secondly above stated :) determined his election to be void (*a*).

2. As to default of petitioners.

18 Journ. 30.
71.

Sitting members demanding petitioner's qualification, on default, petition not to be proceeded in.

Honiton, 29th March, and 3d May, 1715.

It appeared that the sitting members, *sir William Courtenay*, and *Mr. Young*, left with the clerk of the house a demand of the qualification of the petitioner, *Mr. Sheppara*, and that he had not delivered in to the clerk any paper of his qualification.

(*ante*, 48.)

The demand of the said qualification being read, and also the order of the house (of 23d March, 1715, in the same terms as the subsequent order of 13th March, and 21st Nov. 1717, before stated) and the clerk of the house being called upon, and acquainting the house that he had not received any particular of *Mr. Sheppard's* qualification. The committee of

(*a*) There was also a question, whether the petition contained an express charge of want of qualification, as to which it was holden that it did. 1 Lud. 433. 441.

privileges were discharged from proceeding in
Mr. Sheppard's petition.

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So in the cases of *Shaftesbury*, 7th Feb. 1722. *Steyning*, 13th Jan. 1724. *Minehead*, 27th Feb. 1727. *Westbury*, 27th Feb. 1734.

20 Journ. 130.
 Ib. 368.
 21 Journ. 66.
 22 Journ. 395.

In the *Colchester* case, 1782, where the petitioner, *commodore Affleck*, was out of the kingdom at the time of the election, and of the hearing the petition, the committee held it no objection that his qualification, although duly demanded by the sitting member, was not given in; and after the point had been fully argued, resolved, "That the sitting member should not be permitted to go into *commodore Affleck's* qualification; he having been abroad at the time of the election, and having continued in the *West Indies* ever since."

3 Lud. 167 (n).

3. As to default of persons in whose favor petitions are pending.

The case of *Liverpool*, 21st March, 1734, was that of a non-compliance with the standing order of the 6th Feb. 1734; *Mr. Brereton*, one of the sitting members for *Liverpool*, having, pursuant to the said order, left with the clerk of the house his demand in writing of the qualification of *Mr. Cunliffe*, one of the persons al-

22 Journ. 426.

Sect. 5.

ledged to be duly elected in the petition of certain electors.

The house pursued the same course as in the above cases; and the committee of privileges and elections were discharged from proceeding upon so much of the petition as related to *Mr. Cunliffe*.

SECTION 6. *Of the sufficiency of the qualification as depending upon value or title, and of the particularity of the description.*

1. AS to value.

The qualification must be to the amount required, over and above all incumbrances.

22 Journ. 466.

Wendover, 17th April, 1735. *Lord viscount Limerick* petitioned against the election and return of *Mr. Boteler*, upon the ground of his not having a sufficient qualification, under the statute 9 Ann. c. 5. *Mr. Boteler's* estate, the annual value of which was greater than the act required, was under incumbrances; and the question was, whether there was a sufficient surplus.

The house, after hearing the evidence, determined his election to be void (*a*).

Sect. 6.

2. As to title.

The title to the estate, in respect of which the qualification is insisted upon, must be good in law or equity.

In the case of *Coventry*, 1803, the qualification of *Mr. Jefferys*, one of the sitting members, was questioned by the petition of *Mr. Barlow*. 1 Peck. 93, 94.

The rental, or particular, delivered in by *Mr. Jefferys*, as required by the stat. 33 Geo. 2. c. 20. stated his qualification to consist in a rent-charge for his own life, of £300 *per annum*, arising out of land of the value of £1000 *per annum*, in *Shaftesbury*, in the county of D. the property of *William Bryant, esq.* and conveyed to him by Mr. B. by a deed made on the 18th of June, 1802.

Qualification by a rent-charge arising out of property which the proprietor had conveyed to trustees to sell for the payment of his debts, who had accordingly sold them, but had not executed a conveyance of them to the purchaser, the proprietor refusing to join in the conveyance, thinking the estates had been ill sold, was holden not sufficient.

The point hereupon made was, whether *Mr. Bryant* was in a condition, at the time in ques-

(*a*) *Mr. Boteler* had been petitioned against upon his former return for *Hertford* upon the same ground, but was holden duly elected, 21st and 24th May, 1715, and he stated his qualification now insisted upon, to be the same as was then holden sufficient. 18 Journ. 130. 136.

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tion, to make a conveyance of the above rent-charge.

The case appeared to be this; *Mr. Bryant*, by a deed executed in Nov. 1794, had conveyed all his estates in *Shaftesbury* to *lord R.* and others, in trust, to sell them for the payment of his debts. There were certain trusts appointed for the surplus, if any remained. The estates were sold in 1796; but the purchaser failing to complete his contract, they were re-sold, and produced a sum not sufficient to discharge *Mr. Bryant's* debts. No conveyance had ever been executed to the purchaser by the trustees; *Mr. Bryant*, having been often called on to join in a conveyance, had refused, thinking the estate had been ill sold. The trustees had never received any rent. In these circumstances the estate stood, when *Mr. Bryant*, by deed in 1802, in consideration of £6000 secured by *Mr. Jeffery's* bond, payable in three months, with interest, granted the rent-charge, which constituted the qualification in dispute.

In support of the petition it was contended on these facts, that *Mr. Bryant*, having conveyed away all his title to these estates long before the grant of the rent-charge to *Mr. Jefferys*, nothing could pass by that grant: that the utmost *Mr. Bryant* was entitled to, was the

surplus of the money raised by the sale of the estates, after the payment of his debts, which would be merely personal property, if any should happen to remain; but that in fact, it appeared that no surplus could ever accrue to him, the amount of the whole not being sufficient to liquidate the demands upon him: that this conveyance being proved to have been made, it was incumbent upon *Mr. Jefferys* to shew by what subsequent act *Mr. Bryant* had re-acquired his former estates, or had acquired other lands in *Shaftesbury*, from which the rent-charge might arise. And they suggested, as a circumstance which weighed considerably against the reality of the transaction, the extraordinary consideration expressed in the deed to have been given for the rent, namely, £6000 for an estate for life of £300 *per annum*, which might probably be fairly worth only eleven years' purchase.

The counsel for the sitting member insisted, that, from any thing that had appeared, the estate had not passed from *Mr. Bryant*; for no conveyance had been executed to the purchasers under the deed; and, till this should take place, a resulting trust would remain to *Mr. B.* The trustees holding to his use, till the sale should be perfected: and he continuing the equitable owner of the estate; which would be sufficient

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to satisfy the statute. It was said the rents had been proved not to have been received by the trustees; that the consent and co-operation of *Mr. B.* were deemed necessary to perfect the title of the purchaser under the trust-deed; and for want of that consent, the conveyance had in fact never taken place. These circumstances were insisted upon, to shew that the trust-deed itself was colourable, and not a *bonâ fide* transfer of the property; but that at least the resulting trust, which in any event must be admitted to belong to *Mr. B.* was a sufficient foundation in equity for the rent-charge granted by him to *Mr. Jefferys*. And they further contended, that neither the possession of the estate, nor the receipt of the rents and profits, having been proved to be divested from *Mr. B.* he must still be taken to be the real owner.

58 Journ.

The committee decided against the election of *Mr. Jefferys*, "he not being qualified according to the provisions of the act," of 9 Ann. (c. 5.) (a).

11 March,
1803.

(a) In the case of *Berwick*, 29 Nov. 1803, and 5 April, 1803. The petition (*inter alia*) alleged a want of qualification of the sitting members. The ground of that allegation against one of them, *Mr. Fordyce*, was that being a debtor to a considerable amount to the crown, his liability in that respect came within the term reprises in the stat. 9 Ann. c. 5. No evidence was offered upon this head, but the election was avoided in consequence of bribery. See the Journals of the days mentioned. 1 Peck. 401.

In the case of *Bristol*, 1786, an objection was taken, that the qualification of *Mr. Cruger*, who was elected, was executed during the poll, but the committee over-ruled the objection.

Sect. 6.

Simeon, 51.
See the petitions 41 Journ.
181, 182.
Report.
Ib. 439.
Qualification
executed dur-
ing the poll.

In the same case it appeared, that the above qualification was conveyed to a trustee (*Cruger* himself being in *America* at the time,) in consideration of £10,000, no part of which was paid at, or after the time of conveyance, but was secured only by a subsequent mortgage of the estate pretended to be sold. It also appeared that it was the same estate which had been formerly conveyed to *Mr. Cruger*, to give him a qualification on a former election.

Simeon, 51.
Member suffi-
ciently quali-
fied by an
estate con-
veyed to a
trustee in trust
for him in his
absence.

The committee confirmed his election, and in so doing must have considered the qualification sufficient.

3. As to the particularity of the description.

The particularity required in this respect, in swearing to the qualification, sufficiently appears from the oaths in the before-mentioned statutes of 9 Ann. c. 5. (§ 5.) and of 33 Geo. 2. c. 20.

(§ 1.) That which is required in delivering in the particular to the clerk of the house, is to be collected from the orders herein before set forth.

(See ante, 42 n.
46 n.)

(ante, 49.)

Sect. 6.

23 Journ.
403, 414.

Huntingdon, 10th Dec. and 14th Jan. 1739. The qualification of the sitting member, *Mr. Clarke*, and the sufficiency of the particular by him sworn to at the election, were questioned, as not specifying the parishes out of which certain fee-farm rents, part of the qualification, arose.

Upon the whole of the case, *Mr. Clarke* was holden duly elected; but it does not appear with what degree of precision the qualification was described.

SECTION 7. *Scotland.*

Scotland.

THE members for *Scotland* are not required to possess any landed qualification (further than in cases where it would be necessary to make them electors;) the statute of 9 Ann. c. 5. only applies to members for any place in *England*, *Wales*, or *Berwick-upon-Tweed*, and the statute 33 Geo. 2. c. 20. by § 3. specifically exempts the members in question.

SECTION 8. *Ireland.*

Ireland.
See 39 and 40
Geo. 3. c. 67.
Appendix.

BY the fourth article of the union, the qualifications in respect of property of the members elected on the part of *Ireland*, are to

be the same as in case of elections for places in *England*, unless any other provision should thereafter be made by act of parliament of the united kingdom.

Sect. 8.

The stat. 41 Geo. 3. c. 101. § 23 (a), after re-

(a) *The Stat. 41 Geo. 3. c. 101.*

§ 23. Whereas "it was, in
" and by the act for the union
" of *Great Britain* and *Ire-*
" *land*, among other things
" provided and enacted, that
" the qualifications in respect
" of property, of the mem-
" bers elected on the part of
" *Ireland*, to sit in the house
" of commons of the united
" kingdom, should be respec-
" tively the same as were then
" provided by law in the cases
" of elections for counties and
" cities and boroughs respec-
" tively, in that part of *Great*
" *Britain* called *England*, un-
" less any other provision
" should thereafter be made
" in that respect by act of
" parliament of the united
" kingdom:" And whereas,
" by an act passed in the
" ninth year of the reign of
" her late majesty queen
" Anne, intituled, '*An act*
" *for securing the freedom of*
" *parliament, by the farther*
" *qualifying the members to*
" *sit in the house of commons,*
" it was amongst other things
" enacted, that no person
" should be capable to sit or
" vote as a member of the

" house of commons for any
" county, city, borough, or
" cinque port, within that
" part of *Great Britain* call-
" ed *England*, the dominion
" of *Wales*, and town of
" *Berwick-upon-Tweed*, who
" should not have an estate,
" freehold or copyhold, for
" his own life, or for some
" greater estate, either in law
" or equity, to and for his
" own use and benefit, of or
" in lands, tenements, and
" hereditaments, over and
" above what would satisfy
" and clear all incumbrances
" that might affect the same,
" lying or being within that
" part of *Great Britain* call-
" ed *England*, the dominion
" of *Wales*, and town of *Ber-*
" *wick-upon-Tweed*, of the re-
" spective annual value there-
" in limited: and whereas,
" by an act passed in the
" thirty-third year of the
" reign of his late majesty
" king George the second, in-
" tituled, '*An act to enforce*
" *and render more effectual*
" *the laws relating to the qua-*
" *lification of members to sit*
" *in the house of commons,*' it
" was enacted, that every per-
" son (except as in the said

9 Ann. c. 5.

33 Geo. 2. c. 20.

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(For the stat.
33 Geo. 2. c.
20. see ante,
section 3.)

cognizing the above provision, and noticing the requisitions of the statute of the 9 Ann. c. 5. as to qualifications, and also those of the 33 Geo. 2.

“ act is excepted) who should
“ be elected a member of the
“ house of commons, should
“ at the time and in the man-
“ ner in the said last recited
“ act directed, produce and
“ deliver in to the clerk of
“ the said house, at the table
“ of the said house, a paper
“ or account signed by such
“ member, containing the
“ names of the parishes, town-
“ ships, precincts, and coun-
“ ties, in which the lands,
“ tenements, or hereditaments
“ lay, whereby such member
“ should make out his quali-
“ fication, and should also
“ take and subscribe the oath
“ in the said last recited act
“ mentioned and contained;
“ be it therefore further en-
“ acted, that the said last
“ recited act, and all matters
“ and things therein contain-
“ ed shall extend, and be
“ construed to extend, to every
“ person (except as in the
“ said last recited act is ex-
“ cepted) who, from and after
“ the passing of this present
“ act, shall be elected a mem-
“ ber of the house of com-
“ mons of the parliament of
“ the said united kingdom,
“ for any county, city, bo-
“ rough, cinque port, town,
“ or place, in that part of the
“ said united kingdom called
“ *England*, or the dominion

“ of *Wales*, or town of *Ber-*
“ *wick-upon-Tweed*, or in that
“ part of the said united king-
“ dom called *Ireland*: and
“ that it shall be sufficient
“ that the lands, tenements,
“ or hereditaments, whereby
“ such member shall make
“ out his qualification in
“ manner by the said last re-
“ cited act mentioned and
“ directed, shall lie or be
“ either within that part of
“ the said united kingdom
“ called *England*, or the do-
“ minion of *Wales*, or town
“ of *Berwick-upon-Tweed*, or
“ within that part of the said
“ united kingdom called *Ire-*
“ *land*; any thing in the said
“ last recited act, or in the
“ said act passed in the ninth
“ year of the reign of her
“ late majesty queen Anne,
“ to the contrary notwith-
“ standing: provided always,
“ that nothing in this act
“ contained shall extend, or
“ be construed to extend, to
“ require any such qualifica-
“ tion as aforesaid on the
“ part of the member to be
“ from time to time elected
“ and returned by the col-
“ lege of the holy trinity in
“ *Dublin*; any thing herein
“ contained to the contrary
“ in anywise notwithstand-
“ ing.”

c. 20. with respect to producing and delivering them in to the house, extends the *latter act* to every person (not therein excepted) who shall be elected a member of the house of commons for any place in *England*, or *Wales*, or for *Berwick-upon-Tweed*, or for any place in *Ireland*.

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Qualification of Irish members the same as required of those for *England*.

The qualification therefore of *Irish* members depends upon the stat. 33 Geo. 2. c. 20. that statute only (and not the statute of 9 Ann. c. 5.) being extended to them (*a*).

Stat. 9 Ann. c. 5. extended to Irish members, but not the stat. 33 Geo. 2. c. 20.

There is no difference in the amount of qualification required by the two statutes, but it is only under the statute of Anne (§ 5), that a candidate can be called upon to swear to his qualification at the election, or before the meeting of parliament. The penal consequences therefore of a non-compliance with that provision cannot apply in the case of elections in *Ireland*, though the introduction of the statute of Anne into the recital of the stat. 41 Geo. 3. c. 101. § 23. would probably be considered as authorizing a resort to that statute, as a guide in questions as to the nature of qualifications.

(*a*) Before the union with *Ireland*, no landed qualifications was necessary in order to enable a person to be elected and to sit in the *Irish* parliament.

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No qualifica-
tion required
for *Dublin* uni-
versity.

A similar exception to that in *England* in favor of the members for the universities, is made by the 41 Geo. 3. c. 101. § 23. with respect to the member for the *college of the Holy Trinity* in *Dublin*, of whom no qualification is required.

CHAPTER V.

OF ELIGIBILITY FOR PARLIAMENT.

SECTION 1. *Whether eligibility is confined to natural-born subjects?*

SECTION 2. *Whether eligibility is confined to any particular rank or condition of persons?*

SECTION 3. *Whether eligibility is confined to persons resident at, or connected with, the place represented?*

SECTION 4. *Whether eligibility is confined to persons present at the election, and proposed as candidates in the first instance?*

SECTION 5. *Whether eligibility is confined to persons willing to be chosen?*

SECTION 6. *Scotland.*

SECTION 7. *Ireland.*

IN considering what persons are eligible to parliament, we shall point out some general requisites to be attended to, in the first instance, as being necessary to the *prima facie* eligibility, of every member of the house of commons; reserving for another chapter the various disqualifications, by which such eligibility may be affected.

Sect. 1.

The general requisites alluded to will be collected from this, and the following sections, (the subject matter of the two preceding chapters being also kept in view.)

Glanv. 122.

As to the question of whether eligibility is confined to natural-born subjects, it is said in *Glanville*, that to have a voice or interest in making laws for the kingdom is not committed to foreigners, who cannot but retain a special affection to their proper birth-place, and incline to favour the same, in such occasions as may occur concerning their nation.

1 Journ. 715.
732. 798.
Glanv. 120.

Hence an alien has been deemed ineligible. It appears indeed that there have been instances of such persons having sat in the house of commons; one or two such were mentioned in the *Monmouth* case, 10th March, 1623, and 28th May, 1624. In that case, *Mr. Steward* was objected to as being a *Scotchman*, and no natural-born subject; and when the matter had been fully discussed, his election was adjudged void. So in the case of *Clitherow*, 18th Feb. 1625, the election of *Mr. Kirke* was avoided upon the same ground, of his being a *Scotchman* “*ante-natus*.”

1 Journ. 321.

The number of *Scots* (*a*) who attended

(*a*) 23d May, 1614, *sir* committee should consider of
Robert Phelps moved, that the some course, that none of

James the first to *England* excited considerable jealousy, but as the objection to them was confined to the *ante-nati*, this sensation towards them gradually subsided, without producing any interference from the legislature.

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Formerly an alien, if naturalized, became eligible for parliament upon his naturalization; and such continued to be the law till the reign of William the third, when it was provided by the act for the further limitation of the crown, of 12 & 13 W. 3. c. 2. § 3 (*a*), that after the limitation therein enacted should take effect, no person born out of *England*, *Scotland*, or *Ireland*, or the dominions thereunto belonging, although naturalized, except he were born of

4 Inst. 47.
Naturalized
aliens formerly
eligible.

Who are now
eligible as na-
tural-born sub-
jects.

that nation that should be naturalized thereafter, might be of the house. 1 Journ. 493.

7th Feb. 1720, *sir Henry Carey*, one of the knights for *Hertfordshire*, being created *viscount Falkland* of *Scotland*, a doubt arose whether as a nobleman of another kingdom he could sit in the house, but no order was made thereupon. 1 Journ. 511.

(*a*) The stat. 12 & 13 W. 3. c. 2. § 3. "And whereas it is requisite and necessary that some further provision be made for securing our religion, laws, and liberties, from and after the death of his majesty, and the prin-

cess Anne of *Denmark*, and in default of issue of the body of the said princess, and of his majesty respectively," be it enacted, &c. that after the said limitation (*i. e.* to Anne of *Denmark*, &c. and afterwards to princess Sophia, electress of *Hanover*) no person born out of the kingdoms of *England*, *Scotland*, or *Ireland*, or the dominions thereunto belonging, (although he be naturalized, or made a denizen, except such as are born of *English* parents) shall be capable to be of the privy council, or a member of either house of parliament," &c.

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English parents, should be capable of being a member of either house of parliament (*a*).

And by way of further precaution, the stat. 1 Geo. 1. stat. 2. c. 4. after declaring, by § 1, that the above act was not intended to incapacitate any person who was naturalized at or before his then majesty's accession, by § 2 (*b*), enacted, that no person should thereafter be naturalized, unless in the bill exhibited for that purpose, there should be a clause, or particular words inserted, to declare, that such person should not thereby be enabled to be of the privy council, or a member of either house of parliament. And it was thereby further provided, that no bill of naturalization should be received in either house of parliament, unless such clause, or words, should be first inserted or contained therein (*c*).

(*a*) *Bristol*, 7th Feb. 1786. See an allegation in the petition which was presented against *Mr. Cruger*, that he had taken the oath of allegiance to the united states, and had thereby become an alien. 41 Journ. 181. Report, 41 Journ. 439.

(*b*) It is usual, upon foreign princes marrying into the royal family, to repeal this clause, and then to pass an act for their naturalization, so that they become capable of sitting in parliament. 2 Hat. 3.

Middlesex, 1804. The returns made by the aliens at the different police offices, in which there was a declaration made by the person whose alienage was in question, that he was born at *Paris*, and a book containing a memorandum of a licence granted to him under the same statute, were holden sufficient evidence to establish the fact of his being a foreigner. 2 Peck. 118.

(*c*) See more upon this subject, *post*, in the consideration of the votes of aliens.

SECTION 2. *Whether eligibility is confined to any particular rank or condition of persons?*

ELIGIBILITY for parliament depends but very little upon the rank, or condition of the person; some few observations however are necessary upon this head, first as to eligibility in general, and secondly, as to eligibility for counties and for boroughs, &c. respectively.

1. As to eligibility in general, peers, neither *English* nor *Scots*, can become members of the house of commons; they belong, the former personally, the latter either personally, or by representation, to another branch of the legislature (*a*).

Co. 4. Inst. 46, 47.
Peers, English and Scots, ineligible.

With respect to *Irish* peers, the law has made an exception, and they are eligible under certain circumstances.

By the act of union (39 and 40 Geo. 3. c. 67.) (See this act in the Appendix.) article 4, any person holding any peerage of

(*a*) It seems probable that the eldest sons of *English* peers were at some time ineligible: this inference arises from the entries in the Journals of the 21st Jan. 1549, and 9th Feb. 1575, touching *sir Francis Russell*, and lord *Russell*, sons and heirs apparent of *earls of Bedford*, who, it was ordered, were to continue in the house. 1 Journ. 15. 104. It need hardly be mentioned that they are now eligible.

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Irish peers eligible as members of the house of commons, unless elected to sit in the house of lords.

Ireland, then subsisting, or thereafter to be created, “shall not thereby be disqualified from
“being elected to serve, if he shall so think
“fit, or from serving or continuing to serve, if
“he shall so think fit, for any county, city, or
“borough of *Great Britain*, in the house of
“commons of the united kingdom, unless he
“shall have been previously elected as” (there-
in) “above, to sit in the house of lords of the
“united kingdom.”

But such Irish peers, so long as they continue members of the house of commons, not to have the privilege of peerage, nor to be eligible as peers, nor to vote at such elections.

This exception however is thus qualified:
“but that so long as such peer of *Ireland* shall
“so continue to be a member of the house of
“commons, he shall not be entitled to the pri-
“vilege of peerage, nor be capable of being
“elected to serve as a peer on the part of *Ire-*
“*land*, or of voting at any such election; and
“that he shall be liable to be sued, indicted,
“proceeded against, and tried as a commoner,
“for any offence with which he may be charg-
“ed.”

Members who have taken their seats are ineligible for any other place, until they have vacated their former seats; but persons elected for one place may, before they take their seats, be returned for any other place (*a*).

(*a*) By an order of the house, made at the commencement of every session, since the 11th May, 1661, all members who are returned for two or more places, are

Persons in holy orders are not eligible; this point, which, it will be seen, has been a subject of conflicting resolutions in the house of commons, is now finally settled by act of parliament.

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Clergy ineligible.

Loo, 13th Oct. 1553. It was resolved, that *Dr. Newell*, a prebendary of *Westminster*, could not be a member.

1 Journ. 27.

——— (*a*), 7th Feb. 1620. The report from the committee was, “All of opinion against ———, a clerk returned;” the entry further says, “and would have fined the town but for their poverty.”

1 Journ. 511.

Richmond, 9th Jan. 1661. The committee reported, that *Dr. Cradock* was in holy orders, and that he was incapable to be elected, and his name was erased from the return.

8 Journ. 341.
346.

to make their election “by this day three weeks (*i. e.* from the making of the order), for which of the places they will serve, provided there be no question upon the return for that place.” 8 Journ. 247. If the return for either place be petitioned against, the house will not order a new writ for either, until such petition be disposed of. *Bletchingly*, Glam. 30.

When either return is ques-

tioned, the practice is, that the person who is returned for more than one place, shall make his election as soon as his return which was controverted is affirmed, but it does not appear that there is any rule, fixing a particular day for that purpose. 1 Doug. 169.

(*a*) According to *Mr. Hattel*, vol. ii. 7, this was a return for *Morpeth*. See this point treated of, 2 Hat. ib.

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2 Laid. 269,
270.

On the other hand, in the case of *Newport*, 1785, the committee determined that *Mr. Rushworth*, who was proved to be in deacon's orders, was duly elected.

56 Journ. 118.
133. 148. 234.
469. 274. 358.

The law upon this subject was not long since thoroughly investigated in the case of *Old Sarum*, 6th, 9th, 10th, 11th, and 27th March, 2d, 3d, 14th, and 27th April, and 4th May, 1801. *Mr. Horne Tooke*, having been returned, was objected to, as being in priest's orders; a committee was appointed to examine the journals and records, for precedents; and upon their report (4th May), and upon a motion for a new writ, in the room of the reverend *J. H. Tooke*, "who, being at the time of his election, "in priest's orders, was and is incapable of sitting in this house," the motion was negatived (94 to 53).

Immediately upon these proceedings, the stat. 41 Geo. 3. c. 63 (*a*), was passed in order to re-

41 Geo. 3. c.
63.

(*a*) The stat. 41 Geo. 3. c. 63. "An act to remove doubts respecting the eligibility of persons in holy orders to sit in the house of commons." "Whereas it is expedient to remove doubts which have arisen respecting the eligibility of persons in holy orders to sit in the house of commons, and also "to make effectual provision for excluding them from sitting therein;" be it therefore declared and enacted, &c. "That no person having been ordained to the office of priest or deacon, or being a minister of the church of *Scotland*, is or shall be capable of being elected to serve in parlia-

move the doubts. This act declares that no person having been ordained a priest or deacon, or being a minister of the church of *Scotland*, is or shall be capable of being elected to serve

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ment, as a member of the house of commons.

§ 2. "And be it further declared and enacted, that if any person, having been ordained to the office of priest or deacon, or being a minister of the church of *Scotland*, shall hereafter be elected to serve in parliament, such election and return shall be void; and that if any person, being elected to serve in parliament as a member of the house of commons, shall, after his election, be ordained to the office of priest or deacon, or become a minister of the church of *Scotland*, then and in such case the seat of such person shall immediately become void; and if any such person shall, in any of the aforesaid cases, presume to sit or vote as a member of the house of commons, he shall forfeit the sum of five hundred pounds for every day, in which he shall sit or vote in the said house, to any person or persons who shall sue for the same, in any of his majesty's courts at *Westminster*; and the money so forfeited shall be recovered by the person or persons so

suing, with full costs of suit, in any of the said courts, by any action of debt, bill, plaint, or information, in which no essoign, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; and every person against whom any such penalty or forfeiture shall be recovered by virtue of this act, shall be from thenceforth incapable of taking, holding, or enjoying any benefice, living, or promotion, ecclesiastical, and of taking, holding, or enjoying any office of honour or profit under his majesty, his heirs or successors: provided always, that nothing in this act contained shall extend, or be construed to extend, to make void any election of a person to serve as a member of the house of commons, which election shall have taken place before the passing of this act.

§ 3. "Provided also, and be it enacted, that no person shall be liable to any forfeiture or penalty inflicted by this act, unless a prosecution shall be commenced within twelve calendar

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in parliament as a member of the house of commons.

Persons elected, and afterwards ordained, &c. to vacate their seats.

By § 2, if any such person shall be elected, such election and return shall be void; and if any person, being elected a member of the house of commons, shall afterwards be ordained a priest, or deacon, or become a minister of the church of *Scotland*, his seat shall immediately become void.

Persons sitting or voting contrary to 41 Geo. 3. c. 63. to forfeit 500*l.* a day,

By the same clause, if any such person shall, in any of the aforesaid cases, presume to sit or vote as a member of the house of commons, he is liable to forfeit £500 for every day that he shall so sit or vote, to any person that will sue for it in the manner prescribed by the act, the prosecution being by § 4 to be commenced within twelve calendar months.

and to be rendered incapable of church preferment, or of office under the crown.

Moreover, by the above mentioned § 2, every person against whom any such penalty or

“ months after such penalty
“ or forfeiture shall be in-
“ curred.

§ 4. “ And be it further en-
“ acted, that proof of the
“ celebration of divine ser-
“ vice according to the rites
“ of the church of *England*,
“ or of the church of *Scot-*
“ *land*, in any church or cha-
“ pel consecrated or set apart

“ for public worship, shall be
“ deemed and taken to be
“ *primâ facie* evidence of the
“ fact of such person having
“ been ordained to the office
“ of a priest or deacon, or
“ of his being a minister of
“ the church of *Scotland*,
“ within the intent and mean-
“ ing of this act.”

forfeiture shall be recovered, is rendered incapable of church preferment, or of holding any office of honor or profit, under the crown.

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By § 4, proof of celebration of divine service, according to the rites of the church of *England*, or of *Scotland*, in any church or chapel, consecrated or set apart for public worship, is to be *prima facie* evidence of a person having been ordained priest or deacon, or being a minister of the church of *Scotland*.

Evidence of being a priest, deacon, or minister of the church of *Scotland*.

There is no other general restriction with respect to the rank or condition of persons to be elected.

It is true, that by the 46 Edw. 3 (a), no man of the law pursuing business in the king's court, nor sheriff, were to be returned or accepted knights of counties; however, if this ever were binding, *lord Coke* observes, that it was abrogated by the stats. 5 Ric. 2. stat. 2. c. 2, and 7 Hen. 4. c. 15. 4 Inst. 48.

In the 6 Hen. 4. there was in the writ a prohibition against the choosing of lawyers, the

(a) See Appendix to *Ruffhead's statutes*, page 43. *Lord Coke* (4th Inst. 48) considers the 46 Edw. 3. as an ordinance, not as a statute.

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election under which produced the *parliamentum indoctum*.

And in the 18 James 1. (a), (5th Nov. 1620) upon issuing the writs, a proclamation from the king was published, admonishing the electors in their choice of representatives, what sort of men they should, or should not, select.

(a) The king in this proclamation, after setting forth his reasons for calling the parliament, and urging the choice of persons approved for their sincerity in religion, admonishes all his subjects having votes in elections, as to their choice, in the following terms: “ And, as to the
 “ knightes of shires, that they
 “ cast their eyes upon the
 “ worthiest men of all sorts,
 “ of knightes and gentlemen
 “ that are guides and lightes
 “ of their countries, of good
 “ experience, and of great integrity. Men that lead honest and exemplarie lief in
 “ their countries, doing us
 “ good service therein, and
 “ no bankrupts, or discontented persons that cannot fish but in troubled waters.
 “ And for the burgesses,
 “ that they make choice of
 “ them that best understand
 “ the state of their countries,
 “ citties, or burroughes; and
 “ where such may not be had
 “ within their corporations,
 “ then of other grave and
 “ discreet men fit to serve in
 “ so worthy an assembly. For
 “ we may well foresee how ill
 “ effects the bad choice of unfitt men may produce, if
 “ the house should be supplied with bankruptes and
 “ necessitous persons, that
 “ may desire long parliaments
 “ for their private protections; or with young and
 “ unexperienced men, that
 “ are not ripe and mature for
 “ so grave a council; or with
 “ men of mean qualities in
 “ themselves, who may only
 “ serve to applaud the opinion
 “ of others on whom they depend; nor yett with curious
 “ and wrangling lawyers, who
 “ may seek reputation by stirring needless questions; but
 “ we wish all our good subjects to understand theis
 “ our admonitions, as *that*
 “ *we noe way mean to bar them*
 “ *of their lawful freedom in*
 “ *election*, according to the
 “ fundamental laws and laudable custome of this our
 “ kingdome, and especially in
 “ the times of good and settled government.” Grey’s
 Debates, vol. v. 310.

This sort of interference with the elective franchise being now unknown, it is not necessary to examine whether or not it could have any legal effect.

Sect. 2.

2. As to eligibility for counties, and for boroughs, &c. respectively, there is some distinction as to the rank and description of the persons to be chosen.

With respect to counties, by the statute of 23 Hen. 6. c. 14. § 3, knights of shires “shall be notable knights of the same counties for which they shall be chosen, or otherwise such notable esquires, gentlemen of birth, of the same counties, as shall be able to be knights; and no man to be such knight, which standeth in the degree of a yeoman and under.”

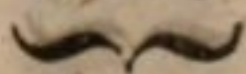
Knights of shires to be notable knights of the same counties, or notable esquires able to be knights. None to be a knight who is in the degree of a yeoman, or under.

The writ commands the sheriff to choose two knights “*of the most fit and discreet of the county,*” and it still continues to describe them as “*girt with swords,*” which expression, however, seems to be of no force, and though it was introduced in the 13 Edw. 3, it is not noticed afterwards in the 23 Hen. 6, although that statute goes much into detail upon the subject of elections of knights for counties.

(See Appendix, vi.)

Prym. Par.
Writ. pr. 2. p.
90.
Sim. 47

Sect. 2.



(See Appendix,
vi.)

With respect to boroughs, &c. there are no requisites for eligibility particular to them, further, than what has been already mentioned as applicable in all cases, or than what will more properly range itself under the succeeding section. It is here only to be observed, that the writ requires the citizens and burgesses to be chosen “of the most sufficient and discreet.”

SECTION 3. *Whether eligibility is confined to persons resident at, or connected with, the place represented?*

(See sect. 2.)

1. WHETHER eligibility is confined to persons resident at the place represented:

Knights and burgesses were formerly to be resident.

By the above mentioned provision of the statute of 23 Hen. 6. c. 14, the knights of counties were to be of the same counties, and by the stat. of 1 Hen. 5. c. 1, the citizens and burgesses of cities and boroughs were to be chosen, “men resiant and free in the same cities and boroughs, and no others.”

(See Appendix,
vi.)

These statutes, although the language of the writ seems to exact their observance, have long

been disregarded (*a*), and by the stat. 14 Geo. 3. c. 58 (*b*), which repeals these provisions, the necessity of residence is altogether done away.

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Residence not now required.

(*a*) *Leicestershire*, 9th Feb. 1620. Sir *George Hastings* had the majority of votes, but because he was not resident in the county, sir *Thomas Beaumont*, the other candidate, was returned. In the debate upon the case, sir *Edward Coke* considered those statutes as *directory*, not *conclusory*, saying "direction is "but matter of order, which "maketh nothing void;" and explaining the meaning of the act to be, "that such should "be chosen as know the state "of the country, and the "grievances thereof." Upon the question it was resolved, that sir *Thomas Beaumont* was not duly elected, and that sir *George Hastings* was. 1 Journ. 515, 516. 1 Doug. 342, 343.

In the case of *Onslow v. Rapley*, bailiff of *Haslemere*, (which was an action for a false return, tried at the assizes in *Surrey*, 20th July, 1681, before sir *Francis Pemberton*, chief justice of the king's bench); the defendant's counsel first insisted on the statute 1 H. 5. c. 1. that a person elected must be free, resident and dwelling within the borough. To which it was answered, and resolved by the court, that little or no regard

was to be had to that ancient statute, forasmuch as the common practice of the kingdom had been ever since to the contrary; and it was the way to fill the parliament house with men below the employment; and the objection was disallowed. 1 Doug. 342. cit. a tract published by lord *Somers*, published 1681, and reprinted in the quarto edition of his *State Tracts*, vol. i. 374.

(*b*) The stat. 14 Geo. 3. c. 58. "An act for repealing an act made in the first year of the reign of king Henry the fifth, and so much of several acts of the eighth, tenth, and twenty-third years of king Henry the sixth, as relates to the residence of persons to be elected members to serve in parliament, or of the persons by whom they are to be chosen." Whereas an act of parliament was made in the first year of the reign of king Henry the fifth, ordaining and establishing what sort of people shall be chosen, and who shall be choosers of the knights and burgesses of the parliament; and also an act in the eighth year of the reign of king Henry the sixth, ordaining what

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2. Whether eligibility is confined to persons connected with the place represented:

Persons, unconnected with the place represented, eligible.

Whatever doubts there may have been formerly as to the eligibility of a person unconnected with the place for which he is chosen, the daily practice of electing persons who are utter strangers to the place they represent, shews that, generally speaking, no such objection can now be insisted upon.

*“ sort of men shall be choosers,
 “ and who shall be chosen
 “ knights of the parliament :
 “ and also an act in the tenth
 “ year of the reign of his said
 “ majesty, requiring certain
 “ things in him who shall be a
 “ chooser of the knights of
 “ parliament ; and also an
 “ act in the twenty-third year
 “ of the reign of his said ma-
 “ jesty, directing who shall
 “ be knights for the parlia-
 “ ment, the manner of their
 “ election, and the remedy
 “ where one is chosen and an-
 “ other returned : and whereas
 “ several provisions, contain-
 “ ed in the said acts, have
 “ been found, by long usage,
 “ to be unnecessary, and are
 “ become obsolete ; in order,
 “ therefore, to obviate all
 “ doubts that may arise upon
 “ the same, may it please
 “ your majesty, that it may
 “ be enacted ; and Be it*

*“ enacted by the king’s most
 “ excellent majesty, by and
 “ with the advice and con-
 “ sent of the lord’s spiritual
 “ and temporal, and com-
 “ mons, in this present par-
 “ liament assembled, and by
 “ the authority of the same,
 “ that the said act, made in
 “ the first year of the reign
 “ of his majesty king *Henry*
 “ the fifth, and every part
 “ thereof ; and so much of
 “ the said several acts, made
 “ in the eighth, the tenth,
 “ and the twenty-third years
 “ of the reign of his ma-
 “ jesty king *Henry* the sixth,
 “ as relates to the residence
 “ of persons to be elected
 “ members to serve in par-
 “ liament, or of the persons
 “ by whom they are to be
 “ chosen, shall be, and the
 “ same are hereby repeal-
 “ ed.”*

A restriction of this nature came in question in the case of *Norwich*, 6th Dec. 1705. An objection was made to Mr. *Bacon* and Mr. *Chambers*, that they were not free of the city, and some (though not very satisfactory) evidence was given of a custom, that none but freemen were capable to be elected (*a*). Mr. *Bacon* and Mr. *Chambers* were, however, holden duly elected.

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15 Journ. 55, 56. A custom, restricting eligibility for a city to persons free of the same, seems illegal.

With respect to the universities; a necessity that their members should be chosen from among their own body, has been contended for (*b*), upon the ground that the language of

It seems that eligibility for the universities, is not restricted to their own body.

(*a*) See this case more fully mentioned in the second part of this work, when treating of the duty of returning officers.

(*b*) At the election for the university of *Oxford*, in 1806, upon the nomination of the right honorable *Charles Abbott*, as a candidate, his eligibility was objected to, upon the ground, that by certain statutes of the university, he was incapacitated from enjoying any academical privileges, by having become a member of the corporation of the city of *Oxford*, (Mr. *Abbott* being a burgess and recorder of the city), and that

the consequence of this was, that he could not be chosen to represent the university in parliament. Notwithstanding this objection, Mr. *Abbott* was elected and returned, and his election and return were not petitioned against.

The university statutes alluded to, are those, "*De burgensibus ad privilegia universitatis admittendis*," and "*De privilegiis universitatis et civitatis non simul seuendis*," the latter of which is explained in the appendix to the university statutes, tit. 2. sect. 9.

The general effect of the university statutes in question, is that the privileges of the

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the respective charters, conferring upon them the right of representation, directs them to send burgesses "*de seipsis*," and that in consequence of the terms of the privilege being so qualified in the grant, they are thus restricted in their choice.

1 Peck. 19.
(*post*, sect. 7.)

This proposition, however, is unsupported by any decision, and the case of the university of *Dublin*, 1803, which will be presently mentioned, militates strongly in favour of a contrary doctrine (*a*).

SECTION 4. *Whether eligibility is confined to persons present at the election, and proposed as candidates in the first instance?*

1. WHETHER eligibility is confined to persons present at the election :

university, and of the city, are not to be enjoyed by any person at the same time.

In order to have substantiated the objection, it must have been established, *first*, that the representation of the university in parliament, was a privilege contemplated by

the rule, and, *secondly*, that such a bye-law was in itself legal.

(*a*) See the subject of the above section much discussed, in the case of *Kirkwall*, &c. 3 Lud. 286. et seq. and 319, n. F.

If it were, at any period, a sufficient objection that a person chosen was not present at the election; or, that being absent, he was not likely to return in order to take upon him the duty of a member of parliament (*a*); the present practice is decidedly in favour of eligibility, under such circumstances, it frequently occurring that persons are elected who are at a distance from the place of election, and even out of the country.

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Persons not present at the election, or abroad, eligible.

And this practice is quite consistent with the language of the writ, inasmuch, as in directing the return of the names of the persons chosen, it adds, "*whether they be present or absent*," thereby both contemplating and sanctioning such a choice (*b*).

(See Appendix, vii.)

In the *Bristol* case, 7th Feb. 16th and 24th March, 1786, Mr. *Cruger* was elected during his absence in *America* (*c*); and, although his

41 Journ. 182. 325. 439.

(*a*) In the case of *Liverpool*, 17th and 27th Feb. 1700, it was one of the grounds of the petition against the election of sir *William Norris*, that he was incapable of being chosen, being in the *East Indies*, and not likely to return. The case was referred to the committee of privileges

and elections, but it does not appear what further passed. 13 Journ. 335. 358.

(*b*) As to non-compliance with a demand of the qualification of persons abroad, see page 55.

(*c*) This circumstance is mentioned by Mr. *Simeon*, 34.

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election and return were petitioned against, no such objection was made.

3Lud.166(n).

And in the *Colchester* case, 1782, commodore *Affleck*, the petitioner, was abroad, both at the time of the election, and of the hearing of the petition; notwithstanding which, he was seated by the decision of the committee,

Persons not named candidates till after the poll has begun, eligible.

2. As to whether eligibility is confined to persons proposed as candidates in the first instance:

It seems, from the following cases, that a person may become a candidate at any time during the election.

15 Journ. 94, 95.

Montgomery, 17th Jan. 1705-6. One of the points made for Mr. *Vaughan*, the petitioner, was, that there had been a surprize, in Mr. *Mason*, the sitting member's appearing as a candidate:

It was in evidence, that it was not known, that he intended to stand, nor had appeared in the town, till after the election was begun. A poll was then demanded for Mr. *Mason*, and he appeared as a candidate, and was chosen. The house resolved that he was duly elected.

Bristol, 1775. An objection was made to the eligibility of Mr. *Burke*, under these circumstances;

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1 Doug. 244.
259.

On the first day of the poll, Mr. *Brickdale*, lord *Clare*, and Mr. *Cruger*, were candidates;

A poll was then demanded, proceeded upon, and adjourned to the following day; on which day, lord *Clare* declined proceeding, and Mr. *Burke* was first named a candidate, and a poll being awarded for him, he was ultimately chosen. Mr. *Brickdale* petitioned, and contended, (*inter alia*), that Mr. *Cruger* and himself, being at the head of the poll when lord *Clare* withdrew, they ought to have been returned.

But the committee resolved that Mr. *Burke* was duly elected.

Nottingham, 1803. There were at first only two candidates, viz. sir *John Borlase Warren*, and Mr. *Coke*; notwithstanding which a poll was opened, (which was stated to be the custom in that place). The poll was kept open half an hour, or more, for the express purpose of giving time to procure a third candidate; Mr. *Birch*, the sitting member, was then proposed. Such a scene of riot afterwards took

1 Peck. 77.

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place, as to prevent 600 persons from voting for the petitioner, Mr. *Coke*.

It was insisted on the part of Mr. *Coke*, that the election was, in point of law, finished before Mr. *Birch* was nominated, and that he, Mr. *Coke*, should therefore have been returned, and consequently was intitled to be seated. The committee decided that the election was void, thereby in effect determining, that at the time of the proposal of Mr. *Birch*, it was not too late for him to come forward. At the same time, the conduct of the returning officer, in thus keeping open the poll, was severely censured.

1 Peck, 85.

SECTION 5. *Whether eligibility is confined to persons willing to be chosen?*

Glanv. 101.

AT the present day, it is not very material to make this enquiry (*a*); suffice it to observe,

(*a*) Should a case arise, in which a person chosen were anxious to avoid his seat; a non-compliance with the statutes 9 Ann. c. 5. and 33 Geo. 2. c. 20, requiring the oath to qualification (*ante*, 44 to 47.) is suggested by lord *Glenbervie* as a mode of so doing, 1 Doug. 283. So, a neglect to take the oaths required by the stat. 30 Car. 2. stat. 2. c. 2. (*ante*, 31.) will disable for parliament, and upon this ground the seat of sir *John Leech*, 10th February, 1620, was vacated, 2 Hat. 64.

that it is distinctly laid down in Glanville, that
 “no man, being lawfully chosen, can refuse
 “the place; for the county and commonwealth
 “have such an interest in every man, that
 “when, by lawful election, he is appointed to
 “this public service, he cannot, by any un-
 “willingness or refusal of his own, make him-
 “self incapable; for that were to prefer the
 “will, or contentment, of a private man, be-
 “fore the desire and satisfaction of the whole
 “country, and a ready way to put by the suffi-
 “cientest men, who are commonly those, who
 “least endeavour to obtain the place.”

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Persons may
 be chosen
 against their
 consent.

In the case of *Gloucestershire*, 1624, sir *Glanv.* 101.
Thomas Estcourt desired not to be elected,
 but the majority being in his favour, he was re-
 turned:

In consequence, one of the questions in the
 case was, whether he was eligible against his
 own consent, and contrary to his desire. It was
 holden clearly that he was.

Bristol, 16th May, 1661; 21st Sept. 6th,
 13th, and 30th Oct. 1666. The earl of *Ossory*
 and *John Knight*, esq. were returned by one
 indenture, and sir *Humphry Hooke*, by an-
 other: sir *Humphry Hooke* subscribed to the
 election of the earl of *Ossory*, and sealed to his

8 Journ. 250.
 626. 631. 635.

Cit. 1 Doug.
 281 (n).

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3 Journ. 644.

return, and renounced his own election. The committee of privileges and elections was of opinion, that “sir *Humphry Hooke* might renounce his return; and that the earl of *Ossory* ought to sit, till the merits of the case, touching the said election, were determined.” In the latter part of this opinion the house concurred, and resolved to that effect; but as to the former part, which goes to the point in question, the matter was frequently before the house, and having been again referred to the committee, sir *Job Charlton* reported from them, “that they had examined the merits of the “cause, touching the election for the city of “*Bristol*, and found that sir *Humphry Hooke* “had much the majority of voices, and that the “opinion of the committee was, that sir *Humphry Hooke* was duly elected, and ought to “sit.” And the house agreed (*a*).

Co. 4 Inst. 49.

Lord *Coke* observes, upon this point, that the king cannot grant a charter of exemption to any man.

(*a*) The abandonment of a seat by a person chosen, is, in fact, recognized by the provisions of the stat. 28 Geo. 3. c. 52. § 2 & 4.

SECTION 6, & *Scotland* (a).

WITH regard to eligibility for places in *Scotland*, the foundation of the law is, *first*, that which was in force in *Scotland* at the time of the union with *England*, on the 1st May, 1707, (whenceforth by the third article of the treaty of union (b), the united kingdom of *Great Britain* was to be represented in one

Eligibility in
Scotland, upon
what depend-
ing.

(a) Since the acts and forms in the appendix relating to elections for *Scotland*, were printed, it has been mentioned to the author, that two several works upon this branch of election law are in preparation, by gentlemen whose professional pursuits in *Scotland* must have laid open to them sources of such knowledge and information as can only come incidentally, and therefore less effectually, to practitioners at the English bar. Had the author been aware of this circumstance in sufficient time, he should have wholly withdrawn from this part of the subject, feeling that his efforts, as applied to a law in many respects peculiar, and essentially differing from that which is in force in *England* and *Ireland*, must, when compared with such as

are above alluded to, be very inadequate.

Having now proceeded too far, completely to alter the plan of the work in this respect, the statutory regulations applicable to *Scotland* will be shortly referred to upon each subject, together with the decisions of the house of commons, or of committees, which may in many instances afford principles which may be generally applicable, but for the reason above mentioned, it is not proposed to treat at any length, of the law of *Scotland*, as depending upon the decisions of the courts of session.

(b) The third article of the union is, "That the united kingdom of *Great Britain* be represented by one and the same parliament, to be stiled the parliament of *Great Britain*." See stat. 5 Ann. c. 8.

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parliament): and, *secondly*, that which was in force in *England* at the same period.

This depends upon the following legislative provisions :

(See Appendix,
oviii.)

By the 22d article of the treaty of union, the forty-five members for *Scotland* were to be elected to sit in the house of commons of the parliament of *Great Britain*, according to the agreement of that treaty, in such manner as by an act of that session of the parliament in *Scotland* was, or should be settled; which act was thereby declared to be as valid, as if it were a part of, and engrossed in that treaty.

(See Appendix,
cxvii.)

Hereupon the act of the parliament of *Scotland*, (of the 5th February, 1707), which was contemplated in the above article, and which was adopted by the act of union, 5 Ann. c. 8. § 12. declares that none are capable to be elected to represent a shire, or burgh, in the parliament of *Great Britain*, for *Scotland*, except such as were then capable by the laws of that kingdom, to be elected as commissioners for shires or burghs, to the parliament of *Scotland*.

By the statute 6 Ann. c. 7. § 30, it is enacted and declared, that “every person disabled to be

“elected, or to sit or vote in the house of
 “commons of any parliament of *England*, shall
 “be disabled to be elected, or to sit or vote
 “in the house of commons of any parliament
 “of *Great Britain*.”

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Thus eligibility for the parliament of *Great Britain* is confined to persons who would have been previously eligible for the parliament of *Scotland*, and also for that of *England*.

The eligibility
 for *Scotland*
 confined to
 persons eli-
 gible in both
 countries be-
 fore the union.

This requisite of previous eligibility for the parliament of *Scotland*, will call for some few observations; in subjoining which, we shall pursue our subject, as nearly as possible, in the same order in which it has been treated of, as relating to *England*.

As to the requisite of previous eligibility for the parliament of *England*, reference may be had to what is stated as applicable to *England*; such of the subject matter as cannot apply to *Scotland*, being from the nature of it easily distinguishable.

With regard to the rank of persons eligible or not, as having been so for the parliament of *Scotland*;

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Eldest sons of
Scots peers,
ineligible for
places in Scot-
land.

The eldest sons of *Scots* peers are ineligible for places in *Scotland*.

16 Journ. 23.

27, 28.

Ib. 27.

Ib. 148.

Ib. 185.

Such had been the law in *Scotland* before the union, and it was afterwards acted upon in the cases of *Aberdeenshire* (*a*), 27th Nov. and 3d Dec. 1708, of the counties of *Linlithgow* (*b*), 6th Dec. 1708, and *Dumfries* (*b*), 10th March, 1708, and of the district of *Tain*, &c. (*c*), 2d April, 1709.

(*a*) Lord *Haddo*, eldest son of the earl of *Aberdeen*, was returned for *Aberdeenshire*, 16 Journ. 28.

(*b*) Lord *Johnstone*, eldest son of the marquis of *Annan-dale*, for the county of *Linlithgow*, and afterwards for that of *Dumfries*, 16 Journ. 27. 148.

(*c*) Lord *Strathnaver*, eldest son of the earl of *Sutherland*, for *Tain* district. 16 Journ. 185. The entry 3 Dec. 1708, 16 Journ. 27, as to the question put in the house is this, "The house (according to order) proceeded to take into consideration that part of the act for uniting the two kingdoms, which relates to the election of members to serve in this house for that part of *Great Britain* called *Scotland*."

And the counsel were called in, and the petitions and representations relating to that

matter, were again read. And after the counsel had been heard, they withdrew; and a motion being made, and the question being put, "That the eldest sons of peers of *Scotland* were capable, by the laws of *Scotland*, at the time of the union, to elect, or be elected, as commissioners for shires, or boroughs, to the parliament of *Scotland*, and, therefore, by the treaty of union are capable to elect, or be elected, to represent any shire or borough in *Scotland*, to sit in the house of commons of *Great Britain*.—It passed in the negative." See a full statement of these proceedings, 3 Lud. 312.

The lords of session, on a hearing in presence, decided that the eldest sons of *Scots* peers are incapable of electing, and being elected members of parliament, 24th Jan. 1792. Lord *Daer*, *contra*,

For each of these places the eldest sons of *Scots* peers were respectively returned, and petitions were severally presented against their returns, alledging that they were ineligible, and setting forth instances in which the parliament of *Scotland* had decided against the eligibility of the eldest sons of peers. The house decided that they were incapable, and new writs were afterwards ordered upon all the vacancies occasioned by this decision.

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16 Journ. 27,
28. 148. 185.

With respect to eligibility for counties, there is a particular restriction as to the description of persons eligible, arising from a general rule in the law of *Scotland*, which applies in the case of every such election, viz :

Eligibility for
counties in
Scotland con-
fined to elec-
to

“That none can be elected but those who can elect.”

1 Wight, 66.
289.
1 Fountain-
hall, 353.

The consequence of this is, that the qualifications for the elector, and for the elected, are

freeholders of *Wigtown*, in the house of lords.

pending upon their being properly upon the freeholders' roll, see county of *Clacmannan*, 2 Doug. 345, and county of *Sutherland*, 2 Fra. 157.

See also lord *Saltoun's* tract “Thoughts on Disqualification,” in which he questions the propriety of the above decision of the house of commons.

And see the whole subject of the freeholders' roll considered by Mr. *Wight*. Book I. chap. 1, 2, 3, 4.

For cases of the qualifications of the elected, as de-

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in one principal point the same, no one being capable of the one character, who is in this respect incapable of the other.

The question of eligibility for a county in *Scotland*, thus necessarily involving that of a right to elect, much repetition in the consideration of this requisite, will be avoided by postponing the enquiry until we treat of the qualifications of electors, in whose cases, with few exceptions, questions as to rights of voting have arisen.

Eligibility for boroughs in *Scotland*, to what persons formerly confined.

With respect to eligibility for boroughs, it appears, that formerly by the law of *Scotland*, no person could be elected for a burgh there, unless he were a burghess, and a trafficking merchant in that burgh (*a*); and this was the

(*a*) Mr. *Wight*, 401, mentions, that during the 16th century the convention of royal burghs made several acts, prohibiting any persons from being chosen commissioners from boroughs to the parliament, but freemen, merchants, and traffickers; but that this regulation having been transgressed, Charles 2. (3d July, 1674) wrote a letter to the royal boroughs upon the subject (of which there is a copy in Mr. *Wight's* Appendix, 494.), in which he complains, that innovation had been brought in amongst them, by electing commissioners, and sending them from several burghs to serve in parliament, conventions, and their own particular and general conventions and meetings, who were not actual residents within the burghs commissionating them, nor bearing proportional charges with them, nor such as can lose or gain in any of their concerns, and observing, that this was contrary to the ancient constitution of the burghs, and to many of their acts, he required them to take especial care that their antient cus-

ground of a decision of the parliament of Scotland, 5 Aug. 1681, sustaining the commission of *Charles Maitland*, and rejecting that of *George Suttie*, for *North-Berwick*; and also of decisions of the same date in favor of Mr. *John Dempster*'s return for *Inverkeithing*; and rejecting that of sir *Patrick Murray* for *Selkirk*.

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1 Wight, 403.
cit. 3 Lud. 255.

Ibid.

And in the same year, it seems that that parliament set aside all the elections of gentlemen for boroughs, unless they were actual residents and traffickers.

Wight, 403.
1 Fount. 148.
(see 3 Lud. 255.)

In the question as to the return for *Perth*, 16th March, 1689, between sir *Patrick Threapland* and *Robert Smith*, it seems uncertain, whether or not the decision which was in favor of the latter, went upon that ground.

From that time there were many returns which afford a contrary inference.

See the entries collected,
3 Lud. 257, et seq.

And, accordingly, since the union, in the case of *Wigtown, &c.* 1775, when on the part of Mr. *Nor-*

2 Doug. 181.

tom, in that respect, should be revived, and the like abuses prevented for the future.

calculated to remedy the mischiefs complained of in the king's letter. For this act see

This letter produced an act of the convention (July, 1675)

1 Wight, Appendix, 495.

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2 Doug. 212.
Persons un-
connected
with the place
represented
eligible for
boroughs in
Scotland.

ton, the sitting member, it was objected to the eligibility of Mr. *Dashwood*, the petitioner, that he was not a burghess of any one of the four burghs for which he was a candidate at the time of the election; the committee determined that Mr. *Dashwood*, the petitioner, ought to have been returned.

3 Lud. 246.

In the case of the district of *Kirkwall*, &c. 1785, Mr. *Fox*, the sitting member, was petitioned against as being ineligible, upon the ground, that he was not a legal qualified burghess in any one of the burghs of the district, having no connection with or property in them, nor paying tax and stent to his majesty according to law; that his election was also void, as being contrary to the act 1707, c. 8*. being born out of *Scotland*, and having no estate or property therein.

(*Appendix
cxvii.)

It appeared in evidence, that Mr. *Fox* was no otherwise qualified as a burghess, than by a burghess ticket of admission by the town council of *Kirkwall*, which was dated three days before the election, and forwarded by the provost on the day on which it was dated, to be delivered to Mr. *Fox*. There was no previous authority given by the council for Mr. *Fox*'s admission, but his ticket of admission was approved of two

days after the election by the council (one member only dissenting).

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Upon a search into the records of *Kirkwall*, for fifty-four years back, no instance was found of any burgess being made there, otherwise than by the previous authority of the corporation. But it was admitted, that the provost of this and other boroughs had, as in the present instance, with the subsequent confirmation of the council, been accustomed to give burgess tickets to strangers, by way of mere compliment, and without conferring any legal right to the privileges of the corporation thereby.

3 Lud. 253.

The committee determined that the sitting member, Mr. *Fox*, was duly elected (a).

3 Lud. 304.

40 Journ. 857.

SECTION 7. *Ireland.*

ELIGIBILITY for places in *Ireland*, depends, *first*, upon eligibility for the parliament of *Ireland*, before the union, on the 1st

Eligibility for places in *Ireland* depends upon eligibility for parliament of *Ireland*; and

(a) The above case of tain much valuable matter *Kirkwall*, &c. and Mr. *Lu-* upon Scots' election law. *der's* notes thereupon, con-

Sect. 7.

also upon eligibility for the parliament of *Great Britain*, under the statute law of the latter.

(See Appendix, cccxxx.)

January, 1801, (whenceforth by the third article of the treaty of union, the united kingdom was to be represented in one parliament.)

This requisite is made necessary by the stat. 41 Geo. 3. c. 52. § 2. whereby all persons disabled from, or incapable of being elected, or sitting and voting in the house of commons of *Ireland*, are disabled from and made incapable of being elected, or sitting and voting in the house of commons of the parliament of the united kingdom, as members for places in *Ireland*.

Secondly, Eligibility for places in *Ireland* further depends, upon eligibility under the statute law of *Great Britain*, for the parliament of *Great Britain*, before the union.

The legislature contemplated that persons who were disabled under the acts of the one parliament, and not disabled under those of the other, might obtain seats for places in that part of the united kingdom for which they were not so disabled; in order to prevent which, the same statute (having, by § 1, disabled generally, all persons previously disabled for the parliament of *Great Britain*; and also, by § 2, as above-mentioned, all persons previously disabled for the parliament of *Ireland*;) by § 3, provides, that “no thing in that act shall be construed to enable

Persons disabled by acts of the parlia-

persons, theretofore disabled by any act of the parliament of *Great Britain*, from sitting and voting in the house of commons of *Great Britain*, to sit or vote in the house of commons of the said parliament of the said united kingdom, as knights, citizens, or burgesses, for any county, city, borough, town, or place, in that part of the united kingdom called *Ireland*."

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ment of *Great Britain* from sitting in the house of commons of *Great Britain*, not eligible for places in *Ireland*, nor *contra*.

The same clause then inverts the provision, to prevent persons disabled by acts of the parliament of *Ireland*, for the house of commons of *Ireland*, from becoming members of the house of commons of the united kingdom, in respect of places in *Great Britain*.

In consequence of this latter provision of the statute 41 Geo. 3. c. 52. § 3. that which is stated herein as applicable in the cases of elections for places in *Great Britain*, may, (except where it is obviously local in its nature) occasionally operate with respect to elections for places in *Ireland*; and for the same reason that which is mentioned as applying at elections in *Ireland*, may operate with respect to elections in *Great Britain* (a).

(a) In any question arising upon this provision of 41 Geo. 3. c. 52. § 3. the

*

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Wherefore this enactment of the stat. 41 Geo. 3. c. 53. § 3. from whence the statutory disabilities for the two parliaments derive their reciprocal cross operation, is always to be kept in view.

We now proceed to point out such parts of the *Irish* law as belong to the subject matter of this chapter.

Aliens naturalized ineligible.

(See Appendix cxi. ccxiii. cclxxxviii. cccxxvii.)

Adverting to what has been stated in the first section, we have to observe, that in the various acts for naturalization of foreigners in *Ireland*, there are clauses providing, that persons thereby naturalized should not be enabled to be in parliament. Such provisions there are in the *Irish* statutes of the 19 & 20 Geo. 3. c. 29. § 2. 23 & 24 Geo. 3. c. 38. § 2. and 36 Geo. 3. c. 48. § 3.; and since the union, in the statute of the 42 Geo. 3. c. 61. § 11.

As to whether eligibility at elections in *Ireland* is confined to persons resident within the places to be represented; it is, by the letter of one of the early *Irish* statutes, expressly criterion will be whether the the united kingdom, under person would or would not the particular law of which, have been eligible, in respect the question would have of a place in that part of arisen.

confined to such persons, both with respect to counties and to boroughs.

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By the *Irish* stat. 33 H. 8. sess. 2. c. 1. § 2. (See Appendix, cci.) every knight and burgess is to be resident and dwelling within the counties, cities, and towns. Eligibility in respect of residence. This direction of the statute is not, however, attended to in practice; and it should seem, upon the grounds hereinbefore mentioned, in (See ante, 81, n. a.) section 3, that no advantage can be taken of its non-observance.

As to whether eligibility in *Ireland* is confined to persons connected with the place represented: a question of this nature was much agitated in the case of the university of *Dublin*, in 1803. (See ante, 83.)

Upon the election and return of Dr. *Knor*, the points made were, *first*, whether it were necessary, in order to his eligibility, that he should be a member of that university; and *secondly*, whether, if that were necessary, he was sufficiently so, to satisfy such requisition. It seems that eligibility for *Dublin* university is not confined to members of the university. 1 Peck. 19.

Dr. *Knor* had received the honorary degree of doctor of laws, from the university in question, and this appears to have been his only claim to be considered as belonging to that body. 1 Peck. 22.

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(See ante, 83,
84.)

The doctrine insisted upon, on the part of the petitioner, was that before mentioned, as having been supposed to apply to the *English* universities, namely, that by the charter no person was eligible who did not belong to the university, and evidence was adduced, shewing, that, with very few exceptions, the members for the *English* universities, as well as for that of *Dublin*, were respectively members of those bodies.

1 Peck, 48.

The committee decided in favour of Dr. *Knor*, the sitting member; not expressing whether they were of opinion, that the restriction arising from the language of the charter was inoperative, or whether, they thought, that it did not affect his case.

It cannot escape observation, that if the real intention of the law were to confine eligibility, for the representation of the universities, to members of those bodies, such intention could scarcely be satisfied, by the circumstance of the person elected having been admitted to an honorary degree; such degrees being not unfrequently conferred on persons, never having previously resided in, or been in any way connected with the university.

CHAPTER VI.

OF DISQUALIFICATIONS FOR PARLIAMENT.

- SECTION 1. *Of disqualifications in general.*
- SECTION 2. *Of disqualification by reason of being re-
turning officer.*
- SECTION 3. *Of disqualification by reason of minority.*
- SECTION 4. *Of disqualification by reason of imbecility.*
- SECTION 5. *Of disqualification by reason of crime, of
outlawry, of imprisonment, or of expulsion from the house.*
- SECTION 6. *Of disqualification by reason of bribery or
treating, at what elections, and against what persons
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- SECTION 7. *Of disqualification at the common law, by
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- SECTION 8. *Of disqualification at the statute law, by
reason of holding certain offices.*
- SECTION 9. *Of disqualification at the statute law, by
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- SECTION 10. *What possession of an office there must be
in order to disqualify the person holding it.*
- SECTION 11. *Of disqualification by reason of holding a
pension from the crown.*
- SECTION 12. *Of disqualification by reason of holding
contracts for the public service.*
- SECTION 13. *Of disqualification by reason of bank-
ruptcy.*
- SECTION 14. *Scotland.*
- SECTION 15. *Ireland.*

AS to the general doctrine of disqualification, although it is the undoubted right of the electors to choose for their representatives, any

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persons whom they may deem worthy of their choice; yet that they are not altogether unrestricted by law in the exercise of this right, we have already seen, when treating of the provisions with regard to the religion, and to the landed qualification of members of parliament, and also in speaking of those requisites for eligibility which are the subject of the preceding chapter.

Assuming the choice of the electors to be regular within the rules hitherto mentioned, we have now to inquire what are the disqualifications for parliament which may attach upon persons who would otherwise be eligible.

Co. 4. Inst. 47,
48. 1 Black.
Com. 175.

These disqualifications are founded either upon the statute law, or upon the law and custom of parliament, declared by the house of commons.

The disqualifications which are founded upon the statute law are mostly of no very ancient date; those founded upon the law and custom of parliament have been handed down from earlier times, and derive their authority from immemorial prescription. The anxiety of the legislature to preserve the law undisturbed in this particu-

lar, at the respective unions with *Scotland* and *Ireland*, is apparent from the enactments of the statutes 6 Ann. c. 7. § 30. and 41 Geo. 3. c. 52. § 1. chosen, which

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(Ante, 92, 93.)
(See Appendix,
ccxxx.)

By these statutes all persons previously disabled for the parliaments of *England* and *Great Britain* respectively, were disabled first for the parliament of *Great Britain*, and afterwards for that of the united kingdom. This provision is here spoken of with reference to elections in *England*: how far previous disqualifications for the parliament of *England*, have been made to operate at elections in other parts of the united kingdom, may be seen under those heads which treat particularly of *Scotland* and of *Ireland*.

We now proceed to examine the different causes of disqualification, remarking, as we have already done, that that which is herein stated as applying to one part of the united kingdom, may, through the medium of the statutes before referred to, also operate in another. Observing also, that the whole doctrine of disqualifications being restrictive of the elective franchise, the rules of the following sections, where they go to disqualify the persons elected, are always of strict construction, the presumption

(Ante, 93. 101.)

(See the case of
Liskeard, post,
sect. 9, n.)

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of law being strongly against disqualification (a).

SECTION 2. *Of disqualification by reason of being returning officer.*

Returning officers disqualified in respect of places wherefrom they mediate or immediately make the return.

NO returning officer is eligible for any place, in respect of which it is his duty, either mediate, or immediately, to make the return; it being an invariable principle, that no officer shall return himself.

Sheriffs.
(See Appendix, vii.)

With regard to sheriffs, there is a specific prohibition in the writ (b); and this prohibition,

(a) Where a member has admitted himself to be in a situation which would disqualify him for the house of commons, he cannot, it seems, be permitted afterwards to dispute that fact. Thus, in the *Gloucestershire* case, 10th January, 1811, a motion was made for a new writ, in the room of the right honorable William Fitzharding Berkeley, commonly called lord viscount Dursley, then earl of Berkeley. The member in question, upon taking his seat, had not given in any qualification, stating himself to be the eldest son of earl Berkeley

(upon whose death the new writ was moved for). At the time of the motion no summons had issued to call him to the house of peers, his legitimacy being disputed. The house, upon debate, ordered the new writ. The claim to the peerage was subsequently tried by the house of lords, and disallowed, upon the ground of the illegitimacy of the claimant.

(b) See the history of the "nolumus" clause, and observations on its authority, *Southampton*, 4 Doug. 93. 97. 109. 112. 130, *et seq.*

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whether it originated in the common law, or whether it was inserted upon the passing of the 46 Edw. 3. (a), ordaining that no sheriff shall be chosen, which seems somewhat doubtful, has been acted upon, whenever the question has arisen, both before and since the making of that statute or ordinance (b).

In the 28 Edw. 1. *Payton*, the sheriff of *Warwickshire*; and in the 43 Eliz. *Nowell*, the sheriff of *Rutlandshire*; were severally deemed to be disqualified upon this ground.

Cit. 1 Doug.
423.
D'Ewes, 624,
625.

In the case of *Stamford*, 27th March, 1677, where Mr. *Hatcher*, the sheriff of *Lincolnshire*, returned Mr. *Nowell*, and afterwards presented a petition claiming to be entitled to the seat in the room of Mr. *Nowell*, his petition was rejected.

9 Journ. 407.

And in the more recent case of *Abingdon*, 3d and 6th March, 1775 (c), Mr. *Mayor*, the

1 Doug. 419.
416.
35 Journ. 170.
174.

(a) The 46 Edw. 3. is to be found in the appendix to *Ruffhead's Statutes*, page 43. See 4 Inst. 48, where lord Coke speaks of this as an ordinance, and not an act of parliament.

(b) Mr. *Oakley*, being sheriff of *Shropshire*, was chosen and sat for *Bishop's Castle*, in

1660; but there was no question made in his case. See 4 Doug. 122.

(c) There are a variety of cases collected in those of *Abingdon*, 1 Doug. 419. and *Southampton*, 4 Doug. 86, which, together with lord *Glenbervie's* notes, are replete with information. Those given

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(see more of this
case, post,
chap. 7. § .

Returning offi-
cers in general.

sheriff of *Berkshire*, having been returned, the committee determined that he was not duly elected, and that the election was void.

The disqualification of other returning officers depends upon the law and custom of parliament. That as such they are disqualified has been repeatedly determined.

1 Journ. 464.
Ib. 569.
Ib. 821.
9 Journ. 725.

In the several cases of *Ludlow*, 14th April, 1614; *Cambridge*, 22d March, 1620; of *Bath*, 18th February, 1625; and of *Wilton*, 14th June, 1660, the returning officers having returned themselves, their elections and returns were respectively set aside. And, in order solemnly to declare the law hereupon, the house, on the 2d June, 1685, made a resolution, "That no mayor can duly return himself a burgess to serve in parliament for the same borough, of which he is a mayor at the time of the election." It was also resolved, "That no mayor, bailiff, or other officer of a borough, who is the proper officer to whom the precept ought to be directed, is capable of being elected to serve in parliament for the same borough, of which he is mayor, bailiff, or officer, at the time of the election."

9 Journ. 725.

are selected as cases wherein it with certainty appears that the person whose election was

in question returned himself.

This resolution has been followed by the cases of *Thetford*, on the same day, (2d June, 1685); of *Hythe*, 4th June, 1685; of *Callington*, 6th June, 1685; of *Honiton*, 15th June, 1685; and of *Lyme*, 3d February, 1727; which were similar in circumstances to those last above mentioned; and the house accordingly ordered new writs, in the room of the persons so improperly returned (*a*).

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9 Journ. 725.
Ib. 728.
Ib. 731.
Ib. 736.
21 Journ. 35.

SECTION 3. *Of disqualification by reason of minority.*

THERE were formerly many instances of persons sitting in the house of commons who were under the age of twenty-one years, notwithstanding that lord *Coke* maintained that the law was against their so sitting, and that they sat only by connivance.

2 Hats. 5, 6.
Instances formerly of minors sitting in parliament.

4 Inst. 47.
1 Journ. 681.

In the case of *Dorchester*, 16th December, 1690, the minority of Mr. *Trenchard*, the petitioner, was admitted by his counsel; notwith-

10 Journ. 507.

(*a*) A person already in parliament being appointed a mayor, and as such returning officer, may continue in parliament. *Exeter*, 20th January, 1628. 1 Journ. 920. See *post*, sect. 7, as to disqualification of a sheriff for another county than that of which he is sheriff.

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2 Hats. 6.

Minors disqualified, and their elections void.

Penalty on minors sitting or voting.
(For these penalties, see post, the chapter upon returns.)

standing which, upon the question and division, he was resolved to be duly elected. There are other cases of a similar import; but the law having been since settled, by the stat. 7 & 8 Wil. 3. c. 25. § 8. (a), it is unnecessary to consider them. By this statute no person is capable of being elected, who is not of the age of twenty-one years; the election of every such person is declared to be void; and if he presume to sit or vote, he is liable to the same penalties, as if he had presumed so to do without being chosen or returned.

(a) The stat. 7 & 8 Wil. 3. c. 25. "An act for the further regulating elections of members to serve in parliament, and for the preventing irregular proceedings of sheriffs, and other officers, in the electing and returning such members."

§ 8. "And be it further enacted, That no person whatsoever, being under the age of one-and-twenty years, shall at any time hereafter be admitted to give his voice for election of any member or members, to serve in this present or any future parliament; and that no person hereafter shall be capable of being

"elected a member to serve in this or any future parliament, who is not of the age of one-and-twenty years; and every election or return of any person under that age is hereby declared to be null and void; and if any such minor hereafter chosen, shall presume to sit or vote in parliament, he shall incur such penalties and forfeitures, as if he had presumed to sit and vote in parliament without being chosen or returned." For cases of minority, see *Cockermouth*, 18th January, 1717, 18 Journ. 672, 673, and *Flintshire*, 1 Peck. 526.

SECTION 4. *Of disqualification by reason of imbecility.*

WHITELOCKE lays it down, that “By
“the law of *England*, a man deaf and dumb, or
“blind (*a*), or an idiot, or madman, are not ca-
“pable to be members of parliament.” It
seems, however, that lunatics, in their lucid in-
tervals, may be chosen, for their lunacy may
never return. If it does, and it be duly reported
to the house, there is a precedent in the case of
Grampound, 29th October, 1566, for vacating
the seat of such lunatic.

1 Whitel.
Com. 461.

Sim. 26.

D'Ewes, 126.

No infirmity of a less degree than those above-
mentioned, can create a disqualification. On
the 9th February, 1575, there was a resolution
of the house, that no person visited with sick-
ness should be amoved from his place in the
house, nor any other during such sickness be
elected.

Ib. 244.

Nevertheless, since this resolution, new writs
were ordered in the instances of *Mr. Swaddon*,

1 Journ. 257.

(*a*) There have been in-
stances of persons who were
blind sitting in the house.
Nor does there seem any good
reason why they should be
disqualified.

Mr. Burton, the present
member for the city of *Ox-*
ford, has sat in several parlia-
ments, notwithstanding such
infirmity.

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1 Journ. 404.

9th November, 1605, and of Mr. *Rogerson*, 2d March, 1609, on account of illness and infirmity. But these were exceptions, the house in general not considering illness a sufficient reason for disqualifying a member, nor unless severe, even an excuse for his non-attendance. This appears from the cases of Mr. *Hassard*, 9th November, 1605; Sir *Thomas Gerard*, 8th March, 1623; of Mr. *Cowcher*, 18th August, 1641; and of Mr. *Pryse*, 7th March, 1715.

1 Journ. 257.

1 Journ. 730.

2 Journ. 262.

18 Journ. 391.

SECTION 5. *Of disqualification by reason of crime, of outlawry, of imprisonment, or of expulsion from the house.*

Persons attainted of treason or felony disqualified.

1. WITH respect to disqualification by reason of crime:

4 Inst. 47, 48.
1 Whitel. Com. 461.

A man attainted of treason or felony (a) is disqualified. Lord *Coke* says, "concerning the

(a) In the *Sudbury* case, Philips, 171, a question arose as to the sufficiency of evidence to prove an attainder of felony. The evidence offered consisted of the minutes of the proceedings of the quarter sessions at *Sudbury*, entered by the town clerk, mentioning the finding the bill against the person in question (a voter) for a felonious offence, his pleading guilty, and the sentence of whipping. It was contended that this could only be proved by a copy of the

“election of two knights, the words of the writ
“be, *Duos milites gladiis cinctos magis ido-*

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record. The committee, however, resolved the evidence to be admissible.

But according to the case of *The King v. The Inhabitants of Castel Careinion*, M. 47 Geo. 3. such fact should be proved by the record. In that case, upon a trial at the sessions respecting the settlement of a pauper, a question arose as to the proof of an attainder of felony. The pauper was called as a witness. An objection was taken to his testimony, that he was an incompetent witness, by reason of a conviction for felony. This was shewn by the evidence of the pauper himself, and by that of the gaoler, to be the fact, and that he was sentenced to twelve months imprisonment; but the record of such conviction was not produced, nor a copy thereof. The sessions were of opinion that he was not a competent witness, and refused to allow him to be examined.

Upon the case being removed into the King's Bench, lord *Ellenborough*, C. J. said, “There cannot be the least doubt that the objection was well founded. The evidence went to affect the rights of third persons, namely the litigant parishes, for the pauper

himself is no party to the cause in court. Whether or not the witness were convicted of the felony, would appear by the record, and it cannot be seriously argued that a record can be proved by the admission of any witness. He may have mistaken what passed in court, and may have been ordered on his knees for a misdemeanor. This can only be known by the record; and there is no authority for admitting parol evidence of it.” *Lawrence*, J. added, “The books are uniform in requiring the production of the record to prove a witness convicted of an offence,” and he cited several authorities. 8 East. Rep. 77.

The same observation which lord *Ellenborough* made as to the evidence affecting third persons, would frequently apply in election cases. Whether the question arise with respect to the person whose seat is disputed, or whether it arise with respect to a voter, other interests than those of the individual are affected by it.

As to the distinctions where copies of records are admissible, or where originals must be produced, see *Peake's Law Evid.* 28.

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(For the writ,
see Appendix,
vi.)

“ *neos, et discretos eligi fac* ; and for the elec-
“ tion of citizens and burgesses, the words of
“ the writ be, *Duos, &c. de discretionibus, et*
“ *magis sufficientibus*, which they cannot be
“ said to be when they are attainted of treason
“ or felony.”

No disqualifi-
cation by fe-
lony, until con-
viction.

The being indicted for felony causes no dis-
qualification until conviction.

D'Ewes, 283.

21st January, 1580. A motion was made,
whether a member indicted of felony ought to
remain of the house, or to forbear coming. It
was adjudged, that he ought to remain of the
house till he were convicted.

No disqualifi-
cation by
crimes short of
treason or fe-
lony.

It does not appear that any crime of less enor-
mity than those above spoken of, carries with it
an absolute disqualification, so as to bind the
electors to observe, that they should not elect
the guilty person.

The house may
expel persons
guilty of mis-
demeanors, or
of gross mis-
conduct.
(As to whether
persons are dis-
qualified by
expulsion, see
post, 123.)

Nevertheless, there have been many instances
where the house of commons have deemed per-
sons unworthy to sit in parliament, by reason
of offences amounting in law only to misde-
meanors, and have expelled them the house;
and in some cases they have done so, where
the misconduct of the member did not in any
way come within the reach of the criminal law:

An instance of this sort has very recently occurred.

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Mr. *Walsh*, member for *Wootton Bassett*, having embezzled money with which he was entrusted, was tried at the Old Bailey, and convicted, on a charge of felony, but afterwards received the king's pardon, by reason of his offence not amounting to felony in the opinion of the judges.

On the 5th March, 1812, he was expelled, as having been guilty of a gross fraud, and notorious breach of trust (as proved at the said trial), and as therefore unworthy and unfit to continue a member of the house of commons.

2. With respect to disqualification by reason of outlawry:

Sir *Bulstrode Whitelocke* speaks without distinction of persons attainted of treason and felony, and outlawed, as not capable to be members of parliament; but as he is speaking of crimes, it must be presumed he means only in criminal suits (a). 1 Whitel. Com. 461.

Sim. 28.

(a) There is a case in Anderson's Rep. 293, case 301, where it is said that divers persons, outlawed as well after judgment as before, were chosen knights and burgesses of the parliament holden in the 35th of Elizabeth, and the question was made, whether they ought to be knights and burgesses of parliament or not, and all the judges held that they ought not, and that such persons might be arrest-

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Outlawry in
civil suits no
disqualifica-
tion.

1 Journ. 55.

There are several decisions of the house, that outlawry in civil suits causes no disqualification.

Camelford, 24th February, 1558. One ground of objection to Mr. *Smyth* was, that he was outlawed, and this was proved to be the case in a plea of detinue; but the house decided that he should still continue a member.

1 Journ. 149.
151.

In the memorable case of *Buckinghamshire*, 22d and 23d March, 1603, sir *Francis Goodwin* had been returned one of the knights; the clerk of the crown refused his return, because he was an outlaw, and the lord chancellor issued a new writ, upon which sir *John Fortescue* was elected and returned.

Introd. to
Glanville's
Rep. lxxiii.

The proceeding touching sir *Francis Goodwin*, which marks an important epoch in parliamentary history, will be mentioned when treating of the writ: suffice it here to state, that although he was proved to be an outlaw, it was resolved by the house, that sir *Francis Goodwin*

ed by *capias utlagatum*, notwithstanding privilege of parliament, and thereupon the queen commanded that no such persons should be permitted in the parliament house. This question has

been so solemnly agitated, that even if this case were entitled to any authority notwithstanding its date and circumstance, it is now completely over-ruled.

“was lawfully elected and returned, and *de jure*
“ought to be received (a).”

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Cumberland, 28th May, 1624. Mr. *Hudlestone*, who was returned one of the knights, was outlawed. It was resolved by the house, that this ought not to prejudice his election.

1 Journ. 797.
Glanv. 124.

Caermarthenshire, 17th Feb. 1667, and 11th April, 1668. Sir *Henry Vaughan* was elected, and the question was, he being an outlaw, whether he could regularly be continued a member of the house. The report of the committee, and the resolution of the house, was, “That there was nothing objected to him to impede his sitting in parliament, or that he was not duly elected a member (b).”

9 Journ. 52. 79.

3. With respect to disqualification by reason of imprisonment:

Imprisonment for a contempt has been holden to create no disqualification.

(a) This question upon sir *Francis Goodwin* produced a bill “to disable all outlawed persons and persons in execution, and all recusants convicted, to be of the parliament;” but it was thrown out upon the third reading, without one yea. 2 Hats. 28.

(b) In the case of Mr. *Fitzherbert*, 1st March, 1592, (1 Hats. 107, D'Ewes, 479. 518.) he was elected, and afterwards taken upon a “*capias utlagatum*,” before the return; *a fortiori*, his election was not invalid.

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1 Journ. 458.
464.

Persons imprisoned for contempt not disqualified.

In the case of sir *William Bamfylde*, 9th and 14th April, 1614, who was committed to prison by the lord chancellor for a contempt, after the summons of the parliament but before the election, the house ordered that he should have his privilege by writ of *habeas corpus*.

Imprisonment in execution formerly a disqualification.

Persons being in prison in execution for debt, at the time of the election, were formerly considered to be disqualified.

1 Journ. 839,
840.

Camelford, 22d and 24th March, 1625. The examination of the election of sir *Thomas Monke* was referred to a committee, and upon their report, and proof made to the house that he was in execution before and at the time of his election, they ordered a writ to issue for a new choice in his room.

8 Journ. 392.
Same point.

Leominster, 22d March, 1662. Mr. *Koningsby* petitioned against the election and return of Mr. *Cornwall* and Mr. *Graham*. The case having been referred to the committee of privileges and elections, their report was, that the poll was denied to Mr. *Koningsby*, that was in nomination for a burgess for that place; but that he being a prisoner in execution for debt, and not eligible, the denying the poll to him could

not avoid the election; and Mr. *Cornwall* and Mr. *Graham* were holden duly elected.

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The house has, however, since recognized a contrary doctrine, in cases of privilege which have incidentally involved this question of disqualification, having acted upon elections under such circumstances, and thereby collaterally sanctioned them (*a*).

On the 25th March, 1690, a petition from Mr. *Montagu*, who was in execution in the custody of the marshal of the King's Bench at the time of his election, was presented, desiring that he might have his privilege. The matter was referred to a committee, to examine and search for precedents, who, by their report on the 5th May, stated, that they had considered whether Mr. *Montagu*, being in execution, was capable of being elected, and seemed strongly of opinion that he was capable, though they did

10 Journ. 356.
Election of a person chosen, while in prison in execution, recognized.

10 Journ. 401.

(*a*) The cases of privilege have generally arisen in instances where the party had taken his seat in parliament before the arrest. See the cases collected in the first volume of Mr. Hatsel's Precedents. In the cases of sir *Thomas Shirley*, 22d March, 1603, 1 Journ. 149, and of Mr. *Asgill*, 10th November, 16th and 17th December, 1707, 15 Journ. 396. 466. 471, where the house caused them to be discharged, they had been elected before they were arrested.

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not expressly come to any conclusion thereupon; nor did the house make any resolution in the case.

2 Hats. 30.

The report of this committee noticed, that sir *Trevor Williams*, and others, served in the then last parliament, although they were charged in execution before the dates of the letters of summons.

62 Journ. 644.
654.

On the 7th July, 1807, Mr. *Galway Mills*, who had been elected while in custody of the marshal of the King's Bench, on mesne process, applied to the house claiming his privilege, in order that he might no longer be detained from attending his duty in parliament. The case was referred to the committee of privileges; and, on the 8th July, 1707, they reported that Mr. *Galway Mills* was entitled to privilege of parliament, and it was ordered that he should be discharged.

4. With respect to disqualification by reason of expulsion from the house:

The law and usage of parliament has vested in the house of commons an undoubted right to expel from their own body, by their solemn resolution, any person who, from being guilty

of some infamous crime, or corrupt or scandalous conduct, has rendered himself unworthy of his seat in parliament (a).

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It becomes a question, whether such vote of expulsion does, or does not, disqualify the person expelled, from being again elected.

In the case of *King's Lynn*, 6th March, 1711, Mr. *Walpole* having been expelled, was again returned for the seat which he had vacated by his expulsion. The house resolved, that he was incapable of serving in that parliament, and ordered a new writ.

17 Journ. 128.
Expulsion in some cases formerly holden to disqualify.

In the case of *Middlesex*, 1769, the proceedings were as follows :

3d February. Mr. *Wilkes* was expelled the house for being the author of a libel. At the

32 Journ. 178.

(a) Such resolutions have been passed in a variety of cases. Instances of which are the expulsion of Mr. *Asgill*, 18th December, 1707, 15 Journ. 474, for being the author of a blasphemous book ; of Mr. *Robert Walpole*, 17th January, 1711, 17 Journ. 30, for receiving 500 guineas, and taking a note for £500 more, on account of two contracts for forage made by him when secretary at war ; of Mr. *Richard Steele*, 18th March, 1713, 17 Journ. 514, for being the author of a scandalous and seditious libel. See also 12 Journ. 78. 502. 512. 519. ; 13 Journ. 344. ; 14 Journ. 171. ; 16 Journ. 502. ; 17 Journ. 97. ; 29 Journ. 723, &c.

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election to supply his vacancy, he was again elected and returned.

32 Journ. 228,
229.

17th February. Upon such his return, the house resolved, that having been in that session expelled the house, he was incapable of being elected to serve in that parliament, and that his election was void, and ordered a new writ.

32 Journ. 324.

17th March. Mr. *Wilkes* having been again elected without opposition, and returned, the house avoided his election, ordering a new writ, as before.

32 Journ. 385.

Mr. *Wilkes* was also a third time elected and returned.

14th April. Upon this latter return, the house resolved that his election and return were null and void.

32 Journ. 387.

And, on the 15th April, Mr. *Luttrell* having also been a candidate at the latter election, the house resolved, that he ought to have been returned; and they caused the return to be amended by the insertion of his name, instead of that of Mr. *Wilkes*, giving leave to petition touching his election within fourteen days.

29th April. A petition was presented by certain freeholders of *Middlesex*, noticing, that the return had been amended as above stated, and representing that Mr. *Luttrell* had not the majority of legal votes; that the majority of freeholders, when they voted for Mr. *Wilkes*, did not mean to throw away their votes, or to wave their right of representation; and that they would not have chosen to be represented by Mr. *Luttrell*, and praying to be heard by their counsel against the election and return. The house fixed a day for hearing the matter of this petition, "so far as it related to the election of Mr. *Luttrell*." Sect. 5.
32 Journ. 447.
Ibid.

On the 8th May, it was heard, and it appeared that the numbers upon the poll were, for Mr. *Wilkes*, 1143; and for Mr. *Luttrell*, 296. 32 Journ. 451.

After the hearing, the house resolved, that Mr. *Luttrell* was duly elected.

The house afterwards considered their resolution of the 17th February, above mentioned, as unfit to remain upon their journals; and by a resolution of the 3d May, 1782, ordered it to be expunged "as being subversive of the rights of the whole body of electors of this kingdom." 32 Journ. 977.

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No inherent
disqualifica-
tion created
by expulsion.

This latter resolution must be regarded as declaring that no inherent disqualification is created by expulsion from the house, independent of the cause of that expulsion, which may, or may not, operate to disqualify in future, according to its nature. Hence, although it is in the discretion of the house to expel, and to repeat their expulsion if they think it expedient so to do, yet the law does not preclude the electors from electing and returning the person expelled, if they shall think him worthy of their choice.

SECTION 6. *Of disqualification by reason of bribery or treating, at what elections, and against what persons operating.*

THE law respecting the offences of bribery and treating, forms one of the most important branches of the election code. The subject involves not only the case of the elected, but that of the electors, and also, by reason of a recent provision of the legislature, that of third persons; upon which account it will be convenient, in order to avoid repetition, to reserve the more minute examination of these offences for a distinct and separate inquiry, shewing only at present how far a substantiated charge of this nature operates as a disqualification for parliament.

Bribery, from the earliest time, by the usage of parliament, was a ground of disqualification. *Whitelocke* says, the law “forbids solicitations, “bribings, or gratifying of sheriffs, head officers, “or others, by any person, or giving money or “rewards (it were well if it extended to drink “and entertainments) to freeholders or inhabi- “tants, to obtain their suffrages, or to procure “one to be elected; and in such cases, proof “being made thereof in in the committee of “privileges, and by them reported to the house “of commons, a member obtaining his election “by such undue and unworthy means, will be “thrown out with disgrace, and the election ad- “judged void.”

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1 *Whitel. Com.*
387.
Bribery a dis-
qualification
by the common
law.

From the unfrequent occurrence of cases of bribery, until after the Restoration, the house had not till then regarded them in the serious light in which they afterwards did. In the case of *Thomas Longe*, member for *Westbury*, 10th May, 1571 (a), who had paid four pounds for his

1 *Journ.* 38.

(a) The entry in the Journals runs, “Forasmuch as *Thomas Longe*, gentleman, returned one of the burgesses for the borough of *Westbury*, in the county of *Wiltshire*, for this present parliament, being a very simple man, and of small capacity to serve in that place, hath this day in

open court confessed, that he gave unto *Anthony Garlande*, mayor of the said town of *Westbury*, and unto one — *Watts* of the same town, the sum of four pounds for that place of room and burgess-ship; it is ordered, by this house, that the said *Anthony Garlande*, and the said — *Watts*, shall im-

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burgess-ship, it does not appear that the house in any way reprehended his conduct, in having so done; their principal anxiety seems to have been, to provide for his indemnity. They ordered the restoration of his money, by the persons to whom he had given it, and that he should be discharged as against such persons, from any bonds he might have entered into, with a view to his election.

They, however, marked their displeasure against the corporation or inhabitants of *Westbury*, by imposing upon them a fine of twenty pounds.

Bribery at elections by degrees becoming more prevalent, and assuming a more inveterate character, in proportion as a seat in parliament became an object of ambition and competition; and amongst other practices, there growing up also that (which *Whitelocke* alludes to) of giv-

mediately repay unto the said *Thomas Longe* the said sum of four pounds; and also that a fine of twenty pounds be by this house assessed upon the corporation or inhabitants of the said town of *Westbury*, to the queen's majesty's use, for their said lewd and slanderous attempt; and that the said *Thomas Longe*, his exe-

cutors and administrators, shall be discharged against the said *Anthony Garlande* and — *Watts*, their heirs, executors, and administrators, of and for all bonds made by the said *Thomas Longe*, to any person or persons, touching the discharge of the exercise of the said room or place of burgess-ship, in anywise."

ing entertainments to electors, at a vast expence to the candidates, the house considered the mischief as calling for their solemn interference.

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Accordingly, on the 2d April, 1677, they passed a resolution (a) declaratory of the law (which was made a standing order on the 21st October, 1678), by which resolution, if any person thereafter to be elected for any place,

9 Journ. 411.
9 Journ. 517.
Resolution of
the house of
commons
against treat-
ing.

(a) Resolved, "That if any person hereafter to be elected into a place for to sit and serve in the house of commons for any county, city, town, port, or borough, after the teste or the issuing out of the writ or writs of election, upon the calling or summoning of any parliament hereafter; or, after any such place becomes vacant hereafter in the time of parliament, shall by himself, or by any other on his behalf, or at his charge, at any time before the day of his election, give any person or persons having voice in any such elections, any meat or drink, exceeding in the true value ten pounds in the whole, in any place or places but in his own dwelling-house or habitation, being the usual place of his abode for six months last past; or shall, before such election be made and declared, make any other present, gift, or reward, or any promise, obligation, or engagement, to do the same, either to any such person or persons in particular, or to any such county, city, town, port, or borough, in general, or to or for the use and benefit of them, or any of them; every such entertainment, present, gift, reward, promise, obligation, or engagement, is by this house declared to be bribery; and such entertainment, present, gift, reward, promise, obligation, or engagement, being duly proved, is, and shall be a sufficient ground, cause, and matter, to make every such election void, as to the person so offending; and to render the person so elected incapable to sit in parliament by such election; and hereof the committee of elections and privileges is appointed to take especial notice and care, and to act and determine matters coming before them, accordingly."

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should, after the *teste* of the writ, or after the vacancy, and before the election, give any elector or electors, any meat or drink exceeding in value ten pounds, except in the dwelling-house of such person, being the usual place of his abode for six months last past; or should before such election be made and declared, make any other present, gift, or reward, or any promise, obligation, or engagement to do the same, either to any elector or electors in particular, or to any such place in general; it was declared to be bribery, and a sufficient ground to make the election void as to the person offending, and to render him incapable to sit in parliament by such election.

In the year 1669, and from thenceforwards, it was frequently in contemplation (a) to make some provision by the statute law for the prevention of bribery and treating; but no act to this effect passed, until the stat. of 7 Will. 3. c. 4. (generally known by the appellation of the treating act), and which was evidently framed upon the above resolution.

(a) Bills of the nature of the stat. 7 Will. 3. c. 4. had from time to time been brought into the house, from the year 1669 until that act passed but had severally failed. See 9 Journ. 100. 103. 251. 374. 383. 385. 650. 659. 697. 10 Journ. 272. 274.

Treating beyond a certain amount, and except in the house of the candidate, had been already forbidden; this statute (a), carrying the pre-exist-

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(a) The stat. 7 Will. 3. c. 4.
 “ *An act to prevent charge*
 “ *and expence in elections of*
 “ *members to serve in parlia-*
 “ *ment.*”

“ Whereas grievous com-
 “ plaints are made, and ma-
 “ nifestly appear to be true,
 “ in the kingdom, of undue
 “ elections of members to
 “ parliament, by excessive
 “ and exorbitant expences,
 “ contrary to the laws, and
 “ in violation of the freedom
 “ due to the election of re-
 “ presentatives for the com-
 “ mons of *England* in parlia-
 “ ment, to the great scandal
 “ of the kingdom, dishonour-
 “ able, and may be destruc-
 “ tive to the constitution of
 “ parliaments:” “ Wherefore,
 “ for remedy therein, and that
 “ all elections of members to
 “ parliament may be hereafter
 “ freely and indifferently made
 “ without charge or expence;
 “ Be it enacted and declared,
 “ by our sovereign lord the
 “ king’s most excellent ma-
 “ jesty, by and with the ad-
 “ vice and consent of the lords
 “ spiritual and temporal, and
 “ commons, in this present
 “ parliament assembled, and
 “ by the authority of the
 “ same, that no person or per-
 “ sons hereafter to be elected

“ to serve in parliament for
 “ any county, city, town, bo-
 “ rough, port, or place, with-
 “ in the kingdom of *England*,
 “ dominion of *Wales*, or town
 “ of *Berwick-upon-Tweed*, af-
 “ ter the *teste* of the writ of
 “ summons to parliament, or
 “ after the *teste*, or the issu-
 “ ing out or ordering of the
 “ writ or writs of election,
 “ upon the calling or sum-
 “ moning of any parliament
 “ hereafter, or after any such
 “ place becomes vacant here-
 “ after, in the time of this
 “ present or of any other par-
 “ liament, shall or do hereaf-
 “ ter, by himself or them-
 “ selves, or by any other
 “ ways or means, on his or
 “ their behalf, or at his or
 “ their charge, before his or
 “ their election to serve in
 “ parliament for any county,
 “ city, town, borough, port,
 “ or place, within the king-
 “ dom of *England*, dominion
 “ of *Wales*, or town of *Ber-*
 “ *wick-upon-Tweed*, directly
 “ or indirectly give, present,
 “ or allow to any person or
 “ persons, having voice or
 “ vote in such election, any
 “ money, meat, drink, enter-
 “ tainment, or provision, or
 “ make any present, gift, re-
 “ ward, or entertainment, or

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No candidate, after the test of the writ of summons, nor after the test issuing out, or ordering writ of election, nor after place becomes vacant, to treat electors, nor to make presents or promises, &c. to electors in particular, nor to place in general, in order to be elected, or for being elected.

ing restrictions somewhat farther, and confirming the disqualification consequent upon the violation of the law; enacts (in substance) that no person or persons thereafter to be elected for any place in *England* or *Wales*, or for *Berwick-upon-Tweed*, after the *teste* of the writ of summons to parliament, or after the *teste* or issuing out, or ordering of the writ or writs of election, upon the calling or summoning of any parliament, or after any such place becomes vacant during any parliament, shall, by himself or themselves, or by any other ways or means on

“shall, at any time hereafter,
“make any promise, agree-
“ment, obligation, or en-
“gagement, to give or allow
“any money, meat, drink,
“provision, present, reward,
“or entertainment, to or for
“any such person or persons
“in particular, or to any
“such county, city, town,
“borough, port, or place in
“general, or to or for the
“use, advantage, benefit, em-
“ployment, profit, or prefer-
“ment, of any such person or
“persons, place or places, in
“order to be elected, or for
“being elected, to serve in
“parliament for such county,
“city, borough, town, port,
“or place.”

§ 2. “And it is hereby fur-
“ther enacted and declared,
“that every person and per-
“sons so giving, presenting,

“or allowing, making, pro-
“mising, or engaging, doing,
“acting, or proceeding, shall
“be, and are hereby declared
“and enacted, disabled and
“incapacitated, upon such
“election, to serve in parlia-
“ment for such county, city,
“town, borough, port, or
“place; and that such per-
“son or persons shall be
“deemed and taken, and are
“hereby declared and enact-
“ed to be deemed and taken,
“no members in parliament,
“and shall not act, sit, or
“have any vote, or place in
“parliament, but shall be and
“are hereby declared and en-
“acted to be, to all intents,
“constructions, and pur-
“poses, as if they had been
“never returned or elected
“members for the parlia-
“ment.”

his or their behalf, or at his or their charge, before his or their election to serve in parliament for any such place, directly or indirectly give, present, or allow, to any person or persons having voice or vote in such election, any money, meat, drink, entertainment, or provision, or make any present, gift, reward, or entertainment, nor shall make any promise, agreement, obligation, or engagement so to do, to any such person or persons in particular, nor to any such place in general, nor to or for the use, advantage, benefit, employment, profit, or preferment, of any such person or persons, place or places, *in order to be elected, or for being elected*, to serve in parliament for such place.

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By § 2. of the same statute, persons offending are declared to be disabled and incapacitated upon such election, to serve in parliament for such place, and are to be deemed and taken to be no members in parliament, and are declared to be to all intents and purposes as if they had never been elected.

Persons offending disabled upon such election to serve for such place, and to be taken to be no member.

The resolution of the house, and the act of parliament, above mentioned, were afterwards followed by the statute of 2 Geo. 2. c. 24. (explained and amended by the 9 Geo. 2. c. 38).

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(For this act,
see Appendix,
xiii.)

(See § 7, of the
act.)

The statute of 2 Geo. 2. c. 24. (commonly termed the bribery act), after introducing certain regulations to be observed at elections, in order to keep them free from the contamination of bribery, imposes a penalty upon the offences therein described; but in dealing with these offences, it does not specifically aim at the elected, further than that they, in common with any other persons, may incur the pecuniary penalties of the act.

With respect to disqualification, the law continued as it stood upon the passing of the statute 7 Will. 3. c. 4. until very recently, when it was somewhat extended, and fortified by the provisions of another act of parliament.

Hitherto no disqualification could attach, unless the act of bribery were exercised, either towards a returning officer, or an elector: there was still, however, another case, not less pernicious to the purity of elections, which was not considered to be within the reach of the law, namely, that of bribery towards persons standing in neither of these capacities, but by their personal connection with particular places, having it in their power to influence the choice of the representatives. The legislature, by the act alluded to, that of the 49 Geo. 3. c. 118, has

contemplated this case, and also that of making public official patronage subservient to election purposes, and has brought them within the penalty of the law, and in so doing directly points at cases of guilt in the elected.

This statute (*a*), after reciting the expediency of making further provisions for preventing

(*a*) The stat. 49 Geo. 3. c. 118. “*An act for better securing the independence and purity of parliament, by preventing the procuring or obtaining of seats in parliament by corrupt practices.*”

“Whereas it is expedient to make further provision for preventing corrupt practices in the procuring of elections and returns of members to sit in the house of commons; and whereas the giving, or procuring to be given, or promising to give or to procure to be given, any sum of money, gift, or reward, or any office, place, employment, or gratuity, in order to procure the return of any member to serve in parliament, if not given to or for the use of some person having a right, or claiming to have a right to act as returning officer, or to vote at such election, is not bribery within the meaning of an act passed in the second year of king George

“the second, intituled, *An act for the more effectual preventing bribery and corruption in the election of members to serve in parliament*, but such gifts, or promises, are contrary to the ancient usage, right, and freedom of elections, and contrary to the laws and constitution of this realm; Be it declared and enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall, from and after the passing of this act, either by himself, herself, or themselves, or by any other person or persons for or on his, her, or their behalf, give, or cause to be given, directly or indirectly, or promise or agree to give any sum of money, gift, or reward, to any per-

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corrupt practices in elections, and that certain acts are not bribery, within the statute of 2 Geo. 2. c. 24. but that they are contrary to the

“ son or persons, upon any
 “ engagement, contract, or
 “ agreement, that such per-
 “ son or persons to whom, to
 “ whose use, or on whose be-
 “ half, such gift or promise
 “ shall be made, shall by him-
 “ self, herself, or themselves,
 “ or by any other person or
 “ persons whatsoever, at his,
 “ her, or their solicitation,
 “ request, or command, pro-
 “ cure, or endeavour to pro-
 “ cure, the return of any per-
 “ son to serve in parliament
 “ for any county, stewartry,
 “ city, town, borough, cinque
 “ port, or place, every person
 “ so having given or promised
 “ to give, if not returned him-
 “ self to parliament for such
 “ county, stewartry, city,
 “ town, borough, cinque port,
 “ or place, shall, for every
 “ such gift or promise, forfeit
 “ the sum of one thousand
 “ pounds, to be recovered in
 “ such manner as is herein-
 “ after provided, with respect
 “ to the sum of five hundred
 “ pounds; and every such
 “ person so returned, and so
 “ having given, or so having
 “ promised to give, or know-
 “ ing of and consenting to
 “ such gifts or promises, upon
 “ any such engagement, con-
 “ tract, or agreement, shall
 “ be and is hereby declared
 “ and enacted to be, disabled
 “ and incapacitated to serve
 “ in that parliament, for such
 “ county, stewartry, city,
 “ town, borough, cinque port,
 “ or place, and that such per-
 “ son shall be deemed and
 “ taken, and is hereby de-
 “ clared and enacted to be
 “ deemed and taken, to be no
 “ member of parliament, and
 “ enacted to be, to all intents,
 “ constructions, and purposes,
 “ as if he had never been re-
 “ turned or elected a member
 “ in parliament; and any
 “ person or persons who shall
 “ receive or accept of, by him-
 “ self, herself, or themselves,
 “ or by any other person or
 “ persons in trust for or to the
 “ use, or on the behalf of him,
 “ her, or them, any such sum
 “ of money, gift, or reward,
 “ or any such promise upon
 “ any such engagement, con-
 “ tract, or agreement, shall
 “ forfeit to his majesty the va-
 “ lue and amount of such sum
 “ of money, gift, or reward,
 “ over and above the sum of
 “ five hundred pounds, which
 “ said sum of five hundred
 “ pounds he, she, or they,
 “ shall forfeit to any person
 “ who shall sue for the same,
 “ to be recovered with such
 “ costs of suit, by action of
 “ debt, bill, plaint, or infor-

ancient usage, right, and freedom of elections,
and contrary to the laws and constitution of

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“ mation, in any of his majes-
“ ty’s courts of record at
“ *Westminster*, if the offence
“ be committed in that part of
“ the united kingdom called
“ *England* and *Wales*; and in
“ any of his majesty’s courts
“ of record at *Dublin*, if the
“ offence be committed in
“ *Ireland*, wherein respective-
“ ly no essoign or wager of
“ law, or more than one im-
“ parlance shall be allowed;
“ and if the offence be com-
“ mitted in *Scotland*, then to
“ be recovered, with full costs
“ of suit, by summary action
“ or complaint before the
“ court of session, or by pro-
“ secution before the court of
“ justiciary there.”

§ 2. “ Provided always, and
“ be it further enacted, That
“ nothing in this act contain-
“ ed shall extend, or be con-
“ strued to extend, to any
“ money paid, or agreed to
“ be paid, to or by any per-
“ son, for any legal expence
“ *bonâ fide* incurred at or
“ concerning any election.”

§ 3. “ And be it further
“ enacted, That if any person
“ or persons shall, from and
“ after the passing of this act,
“ by himself, herself, or them-
“ selves, or by any other per-
“ son or persons, for or on his,
“ her, or their behalf, give, or
“ procure to be given, or pro-

“ mise to give or procure to
“ be given, any office, place,
“ or employment, to any per-
“ son or persons whatsoever,
“ upon any express contract
“ or agreement that such per-
“ son or persons, to whom, or
“ to whose use, or on whose
“ behalf, such gift or promise
“ shall be made, shall, by
“ himself, herself, or them-
“ selves, or by any other per-
“ son or persons, at his, her,
“ or their solicitation, request,
“ or command, procure, or
“ endeavour to procure, the
“ return of any person to serve
“ in parliament for any coun-
“ ty, stewartry, city, town,
“ borough, cinque port, or
“ place, such person so re-
“ turned, and so having given
“ or procured to be given, or
“ so having promised to give
“ or procure to be given, or
“ knowing of and consenting
“ to such gift or promise, up-
“ on any such express con-
“ tractor agreement, shall be,
“ and is hereby declared and
“ enacted to be, disabled and
“ incapacitated to serve in
“ that parliament for such
“ county, stewartry, city,
“ town, borough, cinque port,
“ or place, and that such per-
“ son shall be deemed and
“ taken, and is hereby de-
“ clared and enacted to be
“ deemed and taken, to be no

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this realm; in substance declares and enacts, that if any person or persons shall give, or cause

“ member of parliament, and
 “ enacted to be, to all intents,
 “ constructions, and purposes,
 “ as if he had never been re-
 “ turned or elected a member
 “ in parliament; and any per-
 “ son who shall receive or
 “ accept of, by himself, her-
 “ self, or themselves, or by
 “ any other person or persons,
 “ in trust for, or to the use
 “ or on the behalf of such
 “ persons, any such office,
 “ place, or employment, up-
 “ on such express contract or
 “ agreement, shall forfeit such
 “ office, place, or employ-
 “ ment, and be incapacitated
 “ for holding the same, and
 “ shall forfeit the sum of five
 “ hundred pounds, which said
 “ sum of five hundred pounds
 “ shall be recovered as is here-
 “ in before enacted; and any
 “ person holding any office
 “ under his majesty, who shall
 “ give such office, appoint-
 “ ment, or place, upon any
 “ such express contract or
 “ agreement, that the person
 “ to whom, or for whose use,
 “ such office, appointment, or
 “ place, shall have been given,
 “ shall so procure, or endea-
 “ vour to procure, the return
 “ of any person to serve in
 “ parliament, shall forfeit the
 “ sum of one thousand pounds,
 “ to be recovered in such
 “ manner as is herein-before
 “ provided.”

§ 4. “ And be it further
 “ enacted, That no person
 “ shall be made liable to any
 “ forfeiture or penalty by this
 “ act created or imposed, un-
 “ less some prosecution, ac-
 “ tion, or suit, for the offence
 “ committed, shall be ac-
 “ tually and legally com-
 “ menced against such per-
 “ son within the space of two
 “ years next after such offence
 “ against this act shall be
 “ committed, and unless such
 “ person shall be actually and
 “ legally arrested, summoned,
 “ or otherwise served with any
 “ original or other writ or
 “ process within the same
 “ space of time, so as such
 “ arrest, summons, or service,
 “ of any original or other
 “ writ or process, shall not be
 “ prevented, by such person
 “ absconding or withdrawing
 “ out of the jurisdiction of the
 “ court out of which such
 “ original or other writ or
 “ process shall have issued;
 “ and in case of any such pro-
 “ secution, suit, or process as
 “ aforesaid, the same shall be
 “ proceeded in, and carried
 “ on without any wilful delay;
 “ and that all statutes of jeo-
 “ fails, and amendments of
 “ the law whatever, shall and
 “ may be construed to extend
 “ to all proceedings in any
 “ such prosecution, action,
 “ suit.”

to be given, directly or indirectly, or promise or agree to give, any sum of money, gift, or reward, to any person or persons, upon any engagement, contract, or agreement, that such latter person or persons shall, by themselves or by others, procure, or endeavour to procure, the return of any person to serve in parliament for any place, every person so having given or promised to give, if not returned himself for such place, shall forfeit as therein; and every such person returned, and so having given or so having promised to give, or knowing of and consenting to such gifts or promises upon any such engagement, contract, or agreement, shall be disabled and incapacitated to serve in that parliament for such place, and shall be deemed and taken to be no member of parliament, and is enacted to be to all intents and purposes as if he had never been returned or elected.

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Persons giving money, &c. on engagement to procure, or endeavour to procure, the return of a member of parliament, liable to penalties, disabled to serve in that parliament for such place, and to be taken to be no member.

By § 2. it is provided, that nothing in that act shall extend to, or be construed to extend to, any money paid, or agreed to be paid, for any legal expence *bonâ fide* incurred at or concerning any election. But the question of what are or are not legal expences, is left undefined.

Exception as to legal expences.

(See post, vol. 2 title Bribery and Treating.)

§ 3. Imposes a penalty upon persons giving, or procuring to be given, or promising so to

Persons giving, procuring, or promising, &c. any office,

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&c. upon express contract to procure, or endeavour to procure, return of a member in parliament, or knowing and consenting thereto, disabled, &c.

A person guilty of bribery disqualified, though he have a legal majority of unbribed votes.

do, any office, place, or employment, to any person or persons, upon any *express* contract or agreement to the same effect as that before mentioned, and in like manner disables and incapacitates for that parliament persons so giving, procuring, or promising, or knowing and consenting thereto.

Thus, if either the offence of bribery at the common law, or of treating, contrary to the resolution of the house, or to the stat. of Will. 3. or of bribery within the statute of the 49 Geo. 3. c. 118. be proved to have been committed, disqualification is a necessary and inevitable consequence to the guilty party; nor in a case of bribery of electors, will he be permitted to evade the penalty of the law, by shewing, that after deducting all the contaminated votes, he has still a majority that are unbribed and legal.

10 Journ. 637.

In the case of *Chippenham*, 22d January, 1691, sir *Basil Firebrass*, the sitting member, had 60 votes; major-general *Talmash*, the losing candidate, had only 44. Bribery was imputed to the sitting member; but only 14 of his votes were objected to, and the objections to seven were given up; so that deducting the other seven, he remained with a considerable majority. Yet the house resolved, that sir *Basil Firebrass* and his agents had been guilty of

bribery, in corruptly procuring votes at the election, and that he was not duly elected.

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This was also considered to be the law in the case of *St. Ives*, wherein it was understood on both sides, that Mr. *Praed* (whose election was avoided) must have been declared duly elected, if the committee had not thought, that a person who has gained any votes by bribery, is incapable of sitting on that election, although he have the voices of a majority of uncorrupted electors.

2 Doug. 391.
414, (n).

2. At what elections, and against what persons, a disqualification by reason of bribery or treating operates :

There can be no doubt that, with regard to the particular election, in respect of which the offence has been committed, a person guilty of bribery or treating is disqualified (a).

(a) For cases of bribery or treating, see Journals *passim*. e. g. *Bewdley*, 9 Journ. 397.; *Stockbridge*, 10 Journ. 286.; *Mitchell*, 10 Journ. 469.; *Chippenham*, 10 Journ. 637.; *Aldborough*, 11 Journ. 599. 632.; 12 Journ. 2, 19.; *Ludgershall*, 12 Journ. 498.; *Corfe Castle*, 12 Journ. 636.; *Great Grimsby*, 13 Journ. 379. 383.; *Ilchester*, 1 Peck. 302.; *Berwick*, 1 Peck. 401.; *Boston*, 1 Peck. 434.; *Durham*, 2 Peck. 176.; *Aylesbury*, 2 Peck. 258.

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Disqualifica-
tion by bribery
or treating
continues to
attach upon
the guilty per-
sons, until the
seat has been
effectually
filled.

But with regard to the re-election, in consequence of the avoidance of the former election, neither the language of the resolution of 1677, nor that of the act of 7 Will. 3. c. 4. are explicit as to disqualification. This uncertainty is, however, supplied by a series of decided cases, in which (with one exception only) the following rule has been recognized and adopted, viz. “that until the seat in respect of which the bribery or treating was carried on, has been effectually filled, the person offending continues to be disqualified.” Whether the full extent of the rule is comprized herein, may perhaps be doubtful, but thus much seems fully established by the following cases.

13 Journ. 145.
223. 225. 251.

Thetford, 26th January, 19th and 21st February, and 2d March, 1699. The election of Mr. *Sloane* having been avoided for treating, in breach of the stat. 7 Will. 3. c. 4. he was again returned upon the re-election.

Upon petition against the return, the house having (according to order) proceeded to take into consideration the act of the 7 Will. 3. after debate upon the construction thereof, and upon the question being put, that Mr. *Sloane* be capable of serving in this present parliament for

the said borough, it passed in the negative (a). Sect. 6.

Hindon, 1775, and 1776. The election of general *Smith* and Mr. *Brand Hollis* had been avoided for bribery. General *Smith* was again returned; but upon a petition to the house, founded upon his incapacity to sit, on account of the former bribery, his election was avoided. 1 Doug. 173.
177.
35 Journ. 119.
36 Journ. 10.
27. 77. 94.
4 Doug. 271,

Kirkcudbright, 1781, 1782. Mr. *Johnstone* having been returned, was petitioned against by Mr. *Gordon*, and upon the trial of the petition, it was resolved by the committee, that the latter had the majority of votes, but that he had been guilty of bribery, and that the election was void. Upon the second election, Mr. *Gordon* was elected and returned; but his election was holden void (b). 1 Lud. 72.

Honiton, 1781, and 1782. Mr. *Macleod* being returned, was petitioned against upon the ground of bribery only. The committee deter- 3 Lud. 162.
(n.) A.
38 Journ. 49.
298. 320. 597.
614.

(a) In the cases of *Worcester*, 1774, and of *Ipswich*, 1784, wherein the elections of Mr. *Rous*, and of Mr. *Cator*, had been severally avoided for bribery, neither of these persons became candidates upon the re-elections, being advised that, if elected, they could not retain their seats. 1 Lud. 69.; 3 Lud. 484.

(b) See an opinion of Mr. *Wallace*, and Mr. *Mansfield*, then attorney and solicitor general, upon this case, *Clifford*, 392 (n.) f.

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mined that he was not duly elected; and that the election was void with respect to one of the burgesses.

Upon the new election, Mr. *Wilkinson* was returned, but Mr. *Macleod*, who again became a candidate, petitioned against the return of Mr. *Wilkinson*. Upon the trial of this petition, the counsel for Mr. *Wilkinson* objected to Mr. *Macleod*'s going into any evidence of his case, contending, that his former return having been avoided for bribery at that election, he was therefore ineligible to supply the vacancy.

The minutes of the former committee were produced, and under these circumstances, the committee upon the petition in question, resolved, that Mr. *Macleod* was not eligible to fill the vacancy occasioned by the said resolution.

3 Lud. 165,
(n. A.)

The next case which occurred was that of *Norwich*, 1787, the decision in which is not reconcileable with that in any of the other cases.

3 Lud. 441.
445.

42 Journ. 276.
525, 526.

A person guilty
of bribery at
the former
election, whose
election had

Upon the advancement of sir *Harbord Harbord* to the peerage, in 1786, and a consequent vacancy for his seat, Mr. *Hobart* and sir *Thomas Beever* became candidates. Mr. *Hobart*

was returned; sir *Thomas Beavor* petitioned against him, and amongst other matters there were allegations of bribery and treating. On the trial of this petition, the committee determined, that neither Mr. *Hobart* nor sir *Thomas Beavor* were duly elected; and that the election was a void election.

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been avoided
on that ground,
in one case
holden eligible
upon the re-
election.

Upon the re-election, Mr. *Hobart* was again returned. Certain electors in the interest of sir *Thomas Beavor* petitioned against this return of Mr. *Hobart*, setting forth the allegations of bribery and treating in the former petition, and the resolution of the former committee; and stating his consequent incapacity to represent the said city at any election to fill that vacancy. 3 Lud. 455.

The minutes of the former committee being produced, it appeared, that all the charges of the petition were abandoned, except those of bribery and treating, in support of which there was abundant evidence (*a*). Notwithstanding this, the second committee determined that Mr. *Hobart* was duly elected (*b*).

(*a*) See 3 Lud. 444, 445.

but it does not appear that they were ordered to be entered upon the minutes:

(*b*) Mr. Luders mentions, that the committee, previous to their determination, passed the two following resolutions;

1. "That it does not appear to the committee, from

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The *Norwich* case has been since followed by the very important ones of *Southwark*, 1796, and those of *Canterbury*, 1796, and 1797.

Clifford, 3. 79. *Southwark*, 2d November and 17th December, 1796. The election of Mr. *Thelluson* being petitioned against by Mr. *Tierney*, upon the ground of bribery and treating, was holden to be void; the committee at the same time reporting to the house their resolution that it appeared to them, “that at the last election for “the borough of *Southwark*, *George Woodford Thelluson*, esq. did act in violation of “the statute of 7 Will. 3. c. 4. whereby he is “incapacitated to serve in parliament upon “such election.”

Clifford, 131. Upon the second election, Mr. *Thelluson* was again elected and returned, and Mr. *Tierney* again petitioned against his return, principally upon the ground of his incapacity by the treating at the former election; upon which the decision turned.

the minutes, that the last committee adjudged the seat void, on the effect of any other evidence than that of treating.”

Passed unanimously.

2. “That the disqualification by the stat. 7 and 8 Will. 3. c. 4, so far as the same relate to treating, is prospective to a future election.”

Negatived. (See 3 Lud. 500.

In the trial of the case, the whole of the authorities were anxiously canvassed on either side, and the committee determined that Mr. *Thelluson* was not duly elected; that Mr. *Tierney* ought to have been returned; and that he was duly elected. Sect. 6.
Clifford, 342.

Canterbury, 1796, and 1797. The election of Mr. *Baker* and Mr. *Sawbridge* was avoided, upon the petition of sir *John Honeywood* and Mr. *Gipps*, the allegations of the petition being confined to bribery, treating, and corrupt practices. Ib. 353. 357.

Upon the second election, Mr. *Baker* and Mr. *Sawbridge* having been again returned, their election and return was petitioned against, and the committee decided against them; and sir *John Honeywood* and Mr. *Gipps* were seated, upon grounds analogous to those in the *Southwark* cases.

The decision in these latter cases collaterally agrees with the resolutions in the cases of *Seaford*, 1786; *Coventry*, 1803; and *New Windsor*, 1804, which will be presently mentioned. (See post, page 149, 150.)

It may be questionable further, whether the disqualification at the common law, or under Quære, whether
disqualifica-
tion by bribery

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or treating is confined to the particular vacancy, or whether it may not hold during that parliament.

the stat. of 7 Will. 3. of a person guilty of bribery or treating, is confined to the particular vacancy, according to the rule above stated? or whether it does not enure with respect to the same place, during the remainder of that parliament? (a)

(See ante, 142.)

There is no express authority either for or against this proposition; but the language of the resolution in the *Thetford* case, of 1699, which took place shortly after the passing of the statute, and therefore may be looked to as the contemporaneous exposition of the act, went to negative Mr. *Sloane's* capacity to

(a) In the case of *Stockbridge*, 15th November, 1689, 10 Journ. 286, 287, when it had been resolved, that neither Mr. *Montague*, the sitting member, nor Mr. *Strode*, the petitioner, were duly elected, and that the election was void; and it appeared that both had been guilty of bribery. The question was further put, severally, with respect to each, that he "be disabled from being elected a burgess to serve in the present parliament for the borough of *Stockbridge*." The resolution passed in these terms against Mr. *Montague*, but as against Mr. *Strode*, was negatived, 158 to 135. This case was before the pas-

sing of the treating act. The terms of the resolution in the case of *Thetford*, 1699, (*ante*, 142.) which was after the passing that act, shew, that this notion certainly then prevailed. And indeed it should seem that an interest established in any particular place by corrupt practices, would be equally likely to operate at any other election during the parliament, as upon the immediate vacancy, and in both cases, the guilty person would be alike unfit to represent such place. This is evidently the view which the legislature has taken of the subject, where it falls within the stat. 49 Geo. 3. c. 118.

serve in that “*present parliament* for the said borough.”

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Under the statute 49 Geo. 3. c. 118, the disqualification by reason of offences against that act, is expressly (by § 1. and 3.) *during that parliament*, for such county, &c. &c.

Disqualification under the 49 Geo. 3. c. 118. continues during the parliament. (Ante, 136, 137.)

It may be collected from the cases which have been cited, that the same disqualification applies equally to a person guilty of either of these offences, whether he pretends to a litigated seat as sitting member, or as petitioner.

Disqualification by bribery or treating equally applicable to sitting members and petitioners.

Therefore, in the case of *Seaford*, 1786, a former election having been avoided, upon a petition respecting the election which took place to supply the vacancy, the committee held, that evidence of bribery, committed by one of the petitioners, previous to the former election, and applicable to that, was admissible.

3 Lud. 110.

Moreover, it appears that a committee, the parties in an election case being once before them, will permit the conduct of either a petitioner or a sitting member to be examined into in this particular, even after such party shall have relinquished his claim to be seated.

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1 Peck. 93. 99.
Evidence of
bribery or
treating admis-
sible against
petitioner, al-
though he have
abandoned his
claim to be
seated.

In the case of *Coventry*, 1803, after the petitioners, Mr. *Bird* and Mr. *Moore*, had closed their case, the counsel for the sitting members, Mr. *Jeffreys* and Mr. *Barlow*, in opening their's, proposed to shew, that the petitioners had been guilty of treating. This was objected to, on the other side, the petitioners having abandoned that part of their case, in which they claimed the seats. The committee determined, that although the petitioning candidates no longer claimed the return, the counsel for the sitting members were at liberty to bring evidence to prove that the petitioning candidates acted in violation of the stat. 7 Will. 3. c. 4.

2 Peck. 187.
193.
Such evidence
admissible
against the
person return-
ed, although
he have aban-
doned his claim
to be seated.

So in the case of *New Windsor*, 1804, where Mr. *Ramsbottom* petitioned, upon the grounds that the sitting members had been guilty of bribery and treating, and that the legal majority of votes was in his favor; Mr. *Williams*, one of the sitting members, abandoning his claim to the seat, at the same time insisted upon his right to give evidence of acts of bribery and treating committed by the petitioner Mr. *Ramsbottom*; the committee decided that such evidence in recrimination might be received; and after having determined as between Mr. *Williams* and Mr. *Ramsbottom*, that neither were duly elected, and that the election of Mr. *Wil-*

liams was void, they passed the following resolution :

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“ Resolved, That it appears to this committee, that at the last election for the borough of *New Windsor*, in the county of *Berks*, *John Williams*, esq. hath, by his agents, committed acts of bribery and treating, whereby he is incapacitated to serve in parliament upon such election.

“ That it appears to this committee, that at the last election for the said borough, *Richard Ramsbottom*, esq. hath, by his agents, committed acts of bribery.”

But where an unsuccessful candidate does not petition, evidence affecting him with bribery will not be admitted. Thus, in the case of *Aylesbury*, 1804, the committee ordered an answer of a witness tending to shew a distribution of money on the part of Mr. *Bernard*, who had been a candidate, but did not petition, to be struck out as far as it concerned him.

2 Peck. 261.
Evidence of
bribery or
treating not
admissible
against an un-
successful can-
didate who
does not peti-
tion.

It is not, however, to be inferred from thence, that where a person guilty of bribery or treating in respect of the first election, not being then returned, and not petitioning, but upon such

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election being avoided, again becoming a candidate at the re-election, would not be equally disqualified as in the other cases which have been pointed out. The governing principle is, that the offence is the cause of disqualification, which in all cases operates during that vacancy, and certainly in some during that parliament.

SECTION 7. *Of disqualification at the common law, by reason of holding certain offices.*

THERE are various offices, which create a disqualification for parliament, in the persons holding them.

**Principles of
disqualifica-
tion by office.**

Such disqualification depends in some instances upon the principle, that an attendance in parliament is incompatible with the duty of the office; in others (and more generally) it depends upon the principle that persons, whose official situations may be presumed to place them immediately under the influence of the crown, are but little likely to maintain that independence which ought to characterize the de-

mocratic branch of the legislature, and therefore that the number of such persons permitted to sit in parliament ought to be limited.

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Those disqualifications which depend upon the common law, originate for the most part in the former of these principles; those which depend upon the statute law, generally originate in the latter.

We shall now point out such offices as disqualify at the common law, noticing at the same time those which, though they do not disqualify, nevertheless partake so much of the nature of disqualifying offices, as to have raised the question. The offices which disqualify at the statute law will hereafter be spoken of.

The judges, being summoned as assistants to, and attendants upon, the house of lords, to advise and assist them when required, are disqualified (*a*).

The judges are disqualified.
4 Inst. 47.
Journ. *passim*.

(*a*) *Thorp*, baron of the exchequer, was speaker in the 31 Hen. 6. 5 Com. Dig. 185.

9th November, 1605. Upon the report of the committee for returns and privileges, the question was put touching the lord chief baron, and baron *Snigg*, "being attend-

"ants as judges in the higher
"house, whether they shall
"be recalled" (the committee having reported them, as to be removed): The house resolved, that they should not be recalled, 1 Journ. 257.

Lord chief justice *Glyn* sat in parliament notwithstanding

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Master of the
rolls not dis-
qualified.
Nor masters in
chancery.
Journ. *passim*.
4 Inst. 47.

This disqualification does not extend to

The master of the rolls (*a*).

Nor to masters in chancery.

Nor to any who have judicial places in the duchy court, or other courts ecclesiastical or civil.

Cursitor baron
not disquali-
fied.

20 Journ. 705.

21 Journ. 399.
871.

2 Hats. 38.

With respect to the office of cursitor baron of the exchequer, new writs were ordered in the cases of sir *William Thompson*, 24th May, 1726, and of serjeant *Birch*, 14th January, 1729, upon their acceptance of this office; but Mr. *Birch* was re-elected, and continued to sit until he was expelled (for a breach of trust as a commissioner for sale of the forfeited estates for the use of the public), on the 30th March, 1732.

Attorney-ge-
neral formerly
disqualified.

The king's attorney-general was formerly looked upon as disqualified, upon the ground of his being summoned to attend the house of lords, and give his assistance there.

ing his appointment. See 1st
and 2d October, 1656. 7
Journ. 431.

- It need hardly be mention-
ed, that the law, though it
has thus varied at times, is
now fixed as above stated.

(*a*) *Cromwell*, who was
master of the rolls in the 26
Hen. 8. is mentioned as the

first, who was of the house;
as until that time this office
was holden by ecclesiastics.
Sim. 30. and 2 Hats. 18. In
the 4 & 5 Phil. & Mary (20th
January, 1557), *Cordell*, mas-
ter of the rolls, was chosen
speaker of the house of com-
mons. 1 Journ. 47.

On the 22d November, 1606, this question was touched upon with regard to sir *Henry Hobart*; but the house, in his case, permitted the matter to drop without coming to any decision, and he sat by connivance.

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1 Journ. 323.

2 Hats. 18.

8th and 11th April, 1614. A committee having been appointed to search precedents, reported; and the house resolved, that the attorney-general should for that parliament remain of the house; but that no attorney-general should, after that parliament, serve as a member; and this resolution was acted upon accordingly, on the 7th and 8th February, 1620; on the 9th and 10th February, 1625; and on the 29th January, 1640.

1 Journ. 456.
460.

1 Journ. 511.

513.

Ibid. 817.

2 Journ. 75.

However, soon after the restoration, sir *He-neage Finch*, who had sat several years for the university of *Oxford*, being appointed attorney-general, was suffered to continue in the house; since which this office has not been considered as disqualifying.

Sim. 30.

Carew, 2d part,
130.Office of attorney-general
does not now
disqualify.

Although the office of solicitor-general is precisely analogous to that of attorney-general, he being also summoned to the house of lords, the person holding this office has not ever been deemed to be disqualified.

Solicitor-general
not disqualified.

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1 Journ. 73.

On the 1st October, 1566, the speaker's place being vacant, it was moved by the comptroller (for the commons), that Mr. *Onslow*, solicitor-general, being a member of the commons house, might be restored to them to join with them; upon which Mr. *Onslow* was sent down, with the queen's serjeant-at-law, Mr. *Carus*, and Mr. Attorney-general, to shew for himself why he should not be a member of the house. They alleged many weighty reasons, as well for his office of solicitor, as for his writ of attendance in the upper house. He was, nevertheless, adjudged to be a member of the house of commons, and afterwards chosen speaker.

1 Journ. 117.

And in the same manner Mr. *Popham*, the solicitor-general, was sent for from the house of lords, on the 18th Jan. 1580, and also chosen speaker.

Of the same nature with the offices of attorney and solicitor general, with respect to attendance upon the upper house, is that of a king's serjeant; which, in a case in the 18 Eliz. was adjudged not to disqualify (a).

(a) There is the following entry in the Journal of the 17th February, 1575: "Upon sundry motions had, it is concluded by this house, that according unto the old precedents of this house, Mr. Serjeant *Geffery*, being one of the knights returned for *Sussex*, may have voice, or give his

A question has been made, whether persons employed as ambassadors, or foreign ministers, were or were not disqualified (*a*)? But it is clear that no disqualification attaches by the common law, in respect of such office.

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 Ambassadors and foreign ministers not disqualified. (As to disqualifications by reason of such offices being new, see *post*, sect. 9.) (See *ante*, sect. 2.)

With respect to the office of sheriff (*b*), it has been stated, that wherever the duty of

attendance in this house, as a member of the same, notwithstanding his attendance in the higher house, as one of the queen's serjeants, for his counsel there; as the place where he hath no voice, indeed, nor is any member of the same." 1 Journ. 106.

(*a*) On the 19th and 22d November, 1606, the committee appointed to consider the case of several persons who had received employments from the king since the last session, reported, and it was adjudged upon the question, that sir *Charles Cornwallis*, ambassador in France, and sir *Thomas Edmunds*, ambassador with the Archduke, should still stand in their several places. 1 Journ. 316. 324.; and see 2 Hats. 15 and 16.

(*b*) It may perhaps be questionable, whether the disqualification by reason of holding the office of sheriff, is a subject falling properly within this section, or whether it

does not rather belong to that which follows. It does not seem perfectly ascertained, whether the prohibition in the writ is founded upon the common law, or whether it had its origin in the statute, or (according to lord *Coke*, 4 Inst. 48, and sir *Bulstrode Whitelocke*, 2 Com. 357.) ordinance of the 46 Edw. 3. In the 13 Edw. 3. the commons prayed that writs should be sent, that "the worthiest of knights be chosen," and that "lawyers and sheriffs be left out;" but according to *Whitelocke* (2 Com. 358.) the first time that the clause of "*nolumus*" was in the writ, was in the 47 Edw. 3.

The subject, however, of the disqualification in question is analogous in principle to the other disqualifications in this section. The contest was not whether persons nominated to the office of sheriff should be thereby disqualified, in order to prevent persons being unduly influenced by



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making the return rests with him, he is in every such case disqualified.

Sheriffs at one time altogether disqualified.

The disqualification by reason of the shrievalty operated for some time as a general disqualification, upon the ground that the residence in the county required by the stat. 4 Hen. 4. c. 5. would necessarily occasion an inability in a sheriff to attend his duty in parliament.

1 Journ. 457, 458.

Such was considered to be the law, down to the reign of James the first; and the case of sir *George Selby*, 9th April, 1614, was decided accordingly. He was sheriff of *Durham*, and having been returned knight of the shire for *Northumberland*, he was deemed to be ineligible.

But in the course of that reign, the acquiescence of the commons in a doctrine which gave a discretion to the crown to exclude from parliament a very considerable number of persons, began to be equivocal; and they became

the crown from sitting in parliament; but the question was, whether the crown should have the means of arbitrarily excluding persons from parliament by the appointment to the office of sheriff; the assigning persons for which office in the

first instance, had been transferred from the people, in whom it was (by the *Articuli super chartas*, 28 Edw. 1. st. 2. c. 8.) to the chancellor, treasurer, barons of the exchequer, and justices, by the 9 Edw. 2. st. 2.



evidently inclined to evade, if not to dispute it.

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In the case of *Norfolk*, 10th February, 1625, <sup>1 Journ. 817.</sup> sir *Edward Coke*, being sheriff of *Buckinghamshire*, was chosen one of the knights for *Norfolk*; the king sent a message to the house, observing the same, and hoping that "the house would do him that right as to send out a new writ." The house came to no determination hereupon.

Sir *Edward Coke*, it seems, never took his <sup>2 Hats. 22.</sup> seat in that parliament; but it was resolved in the following year (9th June, 1626), that he <sup>1 Journ. 869.</sup> "standing *de facto* returned a member of the house, should have his privilege."

That which had been hitherto regarded as the rule, was thus tacitly disavowed, and within a few years afterwards, it was again collaterally, but more decidedly, disclaimed.

In the year 1628, *Walter Longe*, the sheriff <sup>4 Doug. 119. (See the authorities there cited.)</sup> of *Wiltshire*, being chosen and sitting as member for the city of *Bath*, an information was filed against him in the star-chamber, for attending in parliament, and not residing in his county, contrary to his oath, and to the statute



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of 4 Hen. 4. c. 5.; and he was fined 2000 merks, and ordered to be imprisoned.

5 Journ. 55.

After the lapse of a considerable interval, the house took the matter into their consideration, and (18th January, 1646-7), passed this resolution: "That Mr. *Walter Longe* shall have the sum of £5000 paid unto him for the damages, losses, sufferings, and imprisonments, sustained and undergone by him, for his service done to the commonwealth, in the parliament of *tertio Caroli*."

Sheriff not disqualified, where he has not to make the return.

From that time, although it has in many instances occurred, that sheriffs have been returned during their shrievalty, the point of general disqualification has not been insisted upon, (notwithstanding that the returns of such persons have been questioned upon other grounds) (*a*).

(*a*) There are a variety of cases shewing that persons who were sheriffs or returning officers have sat in parliament, which are to be found in the report of the *Abingdon* case, 1 Doug. 419; and in that of *Southampton*, 4 Doug. 87. 115, *et seq.* But lord *Glenbervie* (4 Doug. 157, *et seq.*) has shewn, that these were almost invariably cases wherein the election to parliament was prior to the ap-

pointment to the shrievalty or other office to which the making the return was incident, consequently, as affecting the present question, they cease to be material.

There was no objection to the nomination of a member of parliament to the shrievalty, except from the residence in the county enjoined by the stat. 4 Hen. 4. c. 5, and the oath, and this necessity of residence was virtually



Except in the cases of *Wells*, 17th December, 1765, and 15th, 20th, and 31st January, and 24th February, 1766, and of *Southampton*, 1776, wherein the law was fully gone into. In the former of these, the sense of the house was regarded as being so decidedly in favour of Mr. *Child*, the sitting member, that the petition, whereby his return was complained of, amongst other grounds, upon that of his being sheriff of *Warwickshire*, was withdrawn; and in the latter, Mr. *Fleming*, the sheriff of *Hampshire*, was holden to be duly elected for *Southampton*, which is a county of itself, and not within the jurisdiction of the sheriff of *Hampshire*, and therefore not within the rule mentioned in the second section of this chapter.

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30 Journ. 439.  
456. 466. 506.  
601.  
4 Doug. 87.  
125.

done away, by the stat. 3 Geo. 1. c. 15. § 18. which, in substituting a new oath, omits the obligation to residence; and also by § 20, which, in providing that the sheriffs of *Wales* and *Chester* shall take the ancient oath, directs that the clause therein concerning residence shall be left out.

The case of members becoming sheriffs is not likely (except in *London* and *Middlesex*) again to recur, the house having resolved, on the 7th January, 1689 (as in effect they had before done, 16th November, 1675), "that the nominating any member of

this house to the king, to be made a sheriff, is a breach of the privileges of this house." When they made this resolution, they at the same time addressed the king to appoint another sheriff, in the room of sir *Jonathan Jennings*, sheriff of *Yorkshire*; which (18th January) the king complied with. 9 Journ. 378.; 10 Journ. 324. 335.

Mr. Hatsel, vol. 2. p. 25. observes, that where a sheriff is eligible by the people, as in *Middlesex*, it is still very customary for a member to be chosen sheriff.



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SECTION 8. *Of disqualification at the statute law, by reason of holding certain offices.*

BEFORE we proceed to particularize the offices, the disqualification by which we have now to examine, it may be proper to mention, as being connected with this subject, the general provision of the legislature, in the statute 6 Ann. c. 7. § 26. (a), whereby, if any person being a member of the house of commons, shall accept of any office (b) of profit from the crown, during such time as he shall continue a member, his election is thereupon to become void, and a new writ is to issue; but this avoidance of the election does not of itself preclude such person from being again elected.

Member accepting office of profit from the crown to vacate his seat.

Such member not necessarily disqualified to be re-elected.

Members already in the navy or army not to vacate, upon acceptance of new commissions, except upon that of a first commission.

Neither does the rule of vacating the seat upon acceptance of office, extend to any member, who being an officer in the navy or army, shall accept of any new or other commission in the respective services, an exception of such

(a) For this statute see *post*, page 175, *et seq.*

(b) As to what have been considered as offices of profit from the crown, so as to va-

cate a seat by acceptance, see 2 Hats. 33, *et seq.* See also his observation as to the office of steward of the Chiltern Hundreds, *ib.* 41.



persons being made by § 28. of the above statute.

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And this exception has been holden to extend to appointments in their nature, naval or military, when given to officers in the navy or army (*a*). It is, however, confined to members who are actually in these services; the acceptance, therefore, of a commission in the army or navy, by a member, not being at the time of such acceptance an officer therein, vacates his seat. With respect to a commission in the militia, it is otherwise; the acceptance of which, by the stat. 42 Geo. 3. c. 90. § 172. (*b*), does not vacate in any case.

See 2 Hats. 35. 39, 40.

Acceptance of commission in militia not to vacate seat. (See also the two last sections of this chapter.)

There is a similar exception with respect to

(*a*) Thus, an appointment to be master of Greenwich Hospital, or to be lieutenant-general of the ordnance, have been respectively holden not to vacate; 2 Hats. 37. 39. And, by a resolution of the house, of the 9th June, 1733, "the accepting a commission of governor, or lieutenant-governor, of any fort, &c. upon the military establishment of his majesty's guards and garrisons, in Great Britain, by a member being an officer in the army, does not vacate his seat." 22 Journ. 201. For further observations upon

this subject, see 2 Hats. 37, 38.

(*b*) The stat. 42 Geo. 3. c. 90. "An act for amending the laws relating to the militia in England, and for augmenting the militia."

§ 172. "And be it further enacted, that the acceptance of a commission in the militia shall not vacate the seat of any member returned to serve in parliament; and that no person being an officer of the militia, shall be compelled to serve the office of sheriff."



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the acceptance of commissions under the general defence act, of the 43 Geo. 3. c. 55. § 15. (a).

Accepting of office of trustee to execute office of auditor of exchequer, not to vacate seat.

Another exception to the rule has been also made in the case of the acceptance of the office of trustee to execute the office of auditor of the exchequer, under the statute 46 Geo. 3. c. 1. (b), when the auditor shall be appointed a lord of the treasury, it being so provided by § 3. of that statute.

There are also some other cases, wherein provisions have been made which would protect them from the above effect of the statute of Anne, if it could have been considered to attach

(a) The stat. 43 Geo. 3. c. 55. "An act to enable his majesty more effectually to provide for the defence and security of the realm, during the present war; and for indemnifying persons who may suffer in their property by such measures as may be necessary for that purpose."

§ 15. "And be it further enacted, That the acceptance of any commission under the authority of this act shall not vacate the seat of any member returned to serve in parliament."

(b) The stat. 46 Geo. 3. c. 1. "An act to empower the auditor of the exchequer to constitute a trustee for the execution of the said office, in the case therein mentioned."

(§ 1. Empowers the auditor of the exchequer, when appointed a lord of the treasury, to appoint a trustee to execute the office of auditor.)

§ 3. "Provided also, and be it further enacted, That the acceptance of the said office of trustee shall not vacate the seat of any member returned to serve in parliament."



upon them, but as these seem more properly to belong to other matter to be spoken of in this chapter, they will be mentioned hereafter.

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(See post, sect. 9 and 11.)

With respect to the offices which disqualify for parliament at the statute law, the principle before alluded to of guarding against the undue influence of the crown, has given rise to a very extensive system of exclusion of persons in office, from the house of commons.

This system, though before not altogether unknown (*a*), did not operate in any considerable degree till the Revolution, from whenceforward, the commons have been at all times apprehensive of any danger to their independence, and have laboured to fortify and strengthen it in every vulnerable quarter.

With this view, they became anxious for the exclusion of persons whom they regarded as entirely devoted to the throne; nor did they fail, in order to establish this point, to avail themselves of occasions when the crown resorted to

(*a*) In the year 1348, 22 Edw. 3. the commons pray the king, "That no person summoned to parliament should be either a taxer, collector, or receiver of the fifteenth then granted."— And in the 25 Edw. 3. the knights, citizens, and burghesses pray, "That none of them may be made collectors of the aid then granted." 2 Hats. 33. (n).



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them for pecuniary aid, to make an exaction on their part, so highly conducive to their effectual existence in the constitution.

The first statutory regulations directed to this end, were those which prohibit members of the house of commons from enjoying certain offices, and which, in the event of their doing so, incapacitate them from sitting or voting as members.

Such was the tenor of the disqualifying statutes of the 5 W. & M. c. 7.; of the 11 & 12 W. 3. c. 2.; and of the 11 & 12 W. 3. c. 10.

The language of the disqualifying statutes, subsequent to those above-mentioned, has varied in this particular, that instead of disqualifying members from holding certain offices from sitting and voting, they disqualify persons holding the offices in question, not only from sitting and voting, but from being elected,

The statute 5 W. & M. c. 7. (a), by § 57, provided that no member of the house of com-

(a) The stat. 5 W. & M. c. 7. "An act for granting to their majesties certain rates and duties upon salt, and upon beer, ale, and other liquors, for securing



mons should be concerned, directly or indirectly, or any other in trust for him, in the farming, collecting, or managing, the sums of money, duties, or other aids granted by that act, *or that thereafter should be granted by any other act*; that statute at the same time making certain exceptions, wherein this prohibition was not to attach,

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No member to be concerned in managing the duties granted by 5 W. & M. c. 7.

or by any subsequent act.

It was apprehended upon the passing of the

“ certain recompences and advantages in the said act mentioned, to such persons as shall voluntarily advance the sum of ten hundred thousand pounds, towards carrying on the war against France.”

§ 57. “ Provided always, and be it enacted by the authority aforesaid, That no member of the house of commons shall at any time be concerned, directly or indirectly, or any other in trust for him, in the farming, collecting, or managing any of the sums of money, duties, or other aids, granted to their majesties by this act, or that hereafter shall be granted by any other act of parliament; except the commissioners of the treasury, and the officers and commis-

sioners for managing the customs and excise, not exceeding the present number in each office, and those appointed to be commissioners for putting in execution an act, intituled, *An act for granting to their majesties an aid of four shillings in the pound for one year, for carrying on a vigorous war against France*, as to their executing only the authority of the said act, by which they are appointed commissioners: Provided always, That *Thomas Neal*, esq. may be employed by their majesties as they shall think fit, in the ordering or managing the several recompences and advantages hereby given to the contributors upon this act, any thing in this act contained to the contrary notwithstanding.”



## Sect. 8.

Members of parliament may be concerned in the corporation of the bank of England.

statute 5 W. & M. c. 20. (a), under which the corporation of the bank of *England* was established, that doubts might arise whether, by reason of the above act of 5 W. & M. c. 7, any member of parliament might be concerned in that corporation; and as it was not intended that

(a) The stat. 5 W. & M. c. 20. "An act for granting to their majesties several rates and duties upon tonnage of ships and vessels, and upon beer, ale, and other liquors, for securing certain recompences and advantages in the said act mentioned, to such persons as shall voluntarily advance the sum of fifteen hundred thousand pounds, towards the carrying on the war against France."

(§ 20. Authorizes his majesty to erect a corporation, by the name of "Governor and Company of the Bank of England.")

§ 33. "And whereas, by an act of this present session of parliament, intituled, *An act for granting to their majesties certain rates and duties upon salt, and upon beer, ale, and other liquors, for securing certain recompences and advantages, in the said act mentioned, to such persons as shall voluntarily advance the sum of*

*ten hundred thousand pounds towards carrying on the war against France, it is enacted, That no member of the house of commons shall at any time be concerned in the farming, collecting, or managing, any sum or sums of money, duties, or other aids by the said act, or any other act of parliament, granted or to be granted to their majesties, except the persons in the said act excepted; and whereas some doubts may arise, whether any member or members of parliament may be concerned in the corporation to be erected in pursuance of this act; be it therefore declared and enacted, by the authority aforesaid, That it shall and may be lawful to and for any member or members of the house of commons, to be a member or members of the said corporation, for the purposes in this act mentioned, any thing in the said recited act contained to the contrary in anywise notwithstanding."*



there should be any such prohibition, it was so declared, by 5 W. & M. c. 20. § 33.; and there was an enactment to the same effect by the statute 15 Geo. 2. c. 13. § 8. (a), which enacts that no person, in respect of his being governor, deputy-governor, director, manager, or member of the company of the bank of *England*, or for having any stock or share therein, or for any matter or thing to be by him done or performed in the affairs of that corporation, shall be disabled from being or continuing, or from be-

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(a) The stat. 15 Geo. 2. c. 13. "An act for establishing an agreement with the governor and company of the bank of England, for advancing the sum of one million six hundred thousand pounds towards the supply for the service of the year one thousand seven hundred and forty-two."

§ 8. "And it is hereby further enacted, by the authority aforesaid, That no person, in respect of his being governor, deputy-governor, director, manager, or member of the said company, or for having any stock or share therein, or for any matter or thing to be by him done or performed in the affairs of the said corporation, shall be now or at any time hereafter, dis-

abled from being or continuing, or from being elected, or serving as a member of parliament, or be liable, or subject to any penalty, forfeiture, or disability prescribed by any other act or acts of parliament, for not qualifying himself to execute his trust with respect to the affairs of the said corporation, as persons who shall take or execute any office or place of profit or trust are subject and liable unto, by any law now in force, or be adjudged liable to be a bankrupt, within the intent or meaning of all or any of the statutes made against or concerning bankrupts, any law, statute, or provision to the contrary thereof in anywise notwithstanding."



## Sect. 3.

ing elected or serving as a member of parliament.

In the prohibitory clause of the statute 5 W. & M. c. 7, there was an exception of the officers and commissioners of excise to the then present number. This, however, did not long continue; the prohibition was extended to them, and also to certain other officers connected with the duties of excise, by the statute 11 & 12 W. 3. c. 2. (a).

By that statute, no member of the house of commons, during the time of his being so, is capable of being,

No member to  
to be a com-  
missioner or  
farmer of ex-  
cise.

Nor commis-  
sioner of ex-  
cise appeals,  
nor comptrol-  
ler or auditor  
of that duty.

A commissioner or farmer of the duty of excise, upon beer, ale, and other liquors.

Nor a commissioner for determining appeals concerning that duty, or controuling or auditing the account thereof.

(a) The stat. 11 & 12 W. 3. c. 2. "An act for granting an aid to his majesty by sale of the forfeited and other estates and interests in Ireland, and by a land-tax in England, for the several purposes therein mentioned, two shillings in the pound."

§ 150. "And be it en-

"acted, by the authority  
"aforesaid, That no member  
"of the house of commons,  
"in this present or any fu-  
"ture parliament, during the  
"time of his being a mem-  
"ber of parliament, shall,  
"from and after the said  
"four-and-twentieth day of  
"June, 1700, be capable of  
"being a commissioner, or



Nor of holding or enjoying in his own name, or in the name of any other in trust for him, or of executing by himself or by deputy, any office, place, or employment, touching or concerning the farming, collecting, or managing, the said duty of excise,

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Nor to hold any office touching the farming, collecting, or managing the same.

And, by § 151, any member of the house of commons taking, enjoying, or executing, by himself or by deputy, or trustee, any such office, is incapacitated from sitting, voting, or acting, as such member.

Members holding such offices incapacitated.

“ farmer of the duty of excise upon beer, ale, and other liquors, or of being a commissioner for determining appeals concerning the said duty, or controuling or auditing the account of the said duty, or of holding or enjoying in his own name, or in the name of any other person in trust for him, or for his use and benefit, or of executing by himself or his deputy, any office, place, or employment, touching or concerning the farming, collecting, or managing the said duty of excise.”

§ 151. “ And be it further enacted, That if any member of the house of commons, in this present or any future parliament, during the time of his being a

“ member of parliament, shall at any time after the said four-and-twentieth day of June, by himself or his deputy, or any other in trust for him, or for his benefit, take, enjoy, or execute, any office, place, or employment touching or concerning the farming, managing, or collecting the said duty of excise, or determining appeals concerning the said duty, or controuling or auditing the accounts of the same, such person is hereby declared and enacted, to be absolutely incapable of sitting, voting, or acting, as a member of the house of commons in such parliament.”

§ 152. “ Provided always, and be it hereby declared, that nothing hereinbefore



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No member to be a commissioner or farmer of the customs, nor to hold any office touching the farming, collecting, or managing the same.

Members holding such offices incapacitated.

Another exception in the prohibitory clause of the statute 5 W. & M. c. 7, was, that which related to the officers and commissioners of the customs to the then present number. This was also soon done away by the statute 12 & 13 Will. 3. c. 10. (a), which, corresponding in substance, and in terms nearly similar to that just mentioned with regard to the officers and commissioners of excise, by § 89 and 90, makes a simi-

“ contained shall extend, or  
 “ be construed to extend,  
 “ (during the continuance of  
 “ this parliament) to the dis-  
 “ abling any person at pre-  
 “ sent a member of the house  
 “ of commons, from being  
 “ concerned in the managing,  
 “ farming, or collecting the  
 “ said duties of excise, or in  
 “ determining appeals con-  
 “ cerning the same, or in  
 “ controuling or auditing the  
 “ accounts thereof, so as such  
 “ person shall not, after the  
 “ said twenty-fourth day of  
 “ June, 1700, sit, vote, or  
 “ act, in the said house, any  
 “ thing hereinbefore contain-  
 “ ed to the contrary notwith-  
 “ standing.”

(a) The stat. 12 & 13 W. 3.  
 c. 10. “ *An act for grant-  
 “ ing an aid to his majesty for  
 “ defraying the expence of his  
 “ navy, guards, and garrisons,  
 “ for one year, and for other  
 “ necessary occasions, two  
 “ shillings in the pound.*”

§ 89. “ And be it enacted,  
 “ by the authority aforesaid,  
 “ That no member of the  
 “ house of commons, from  
 “ and after the dissolution of  
 “ this present parliament,  
 “ shall be capable of being a  
 “ commissioner, or farmer of  
 “ the customs, or of holding,  
 “ or enjoying in his own  
 “ name, or in the name of  
 “ any other person in trust  
 “ for him, or for his use or  
 “ benefit, or of executing by  
 “ himself, or his deputy, any  
 “ office, place, or employ-  
 “ ment, touching or concern-  
 “ ing the farming, collecting,  
 “ or managing the customs.”

§ 90. “ And be it further  
 “ enacted, That if any mem-  
 “ ber of the house of com-  
 “ mons, from and after the  
 “ dissolution of this present  
 “ parliament, shall, during  
 “ the time of his being a  
 “ member of parliament, by  
 “ himself or his deputy, or  
 “ any other in trust for him,  
 “ or for his benefit, take, en-



lar prohibition and incapacity in the case of commissioners and officers of the customs.

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It is material to attend to the exact terms of these statutes of Will. 3. The language of the legislature only goes to forbid members from holding certain offices while they continue to be in parliament, and also to forbid persons holding such offices from sitting or voting as members; but it does not in terms disqualify such officers from being elected.

Distinction in disqualifying statutes; some disqualifying from sitting as members, others also disqualifying from being elected.

A question arises hereupon, whether a person holding an office within these statutes, is disqualified from being elected, or only from sitting.

In the case of *Dunwich*, 5th & 9th February, 1708-9, sir *Richard Allen* having succeeded upon petition against sir *Charles Bloys*, desired the opinion of the house, before he took his seat, upon the stat. 12 & 13 Will. 3. c. 10. (the point not having been made a question upon the trial of the petition).

16 Journ. 94. 98, 99. Member holding office disqualifying under the stat. 12 & 13 W. 3. c. 7, at the time of the election, but resigning before he took his seat, holden to be entitled to sit.

“ joy, or execute, any of- “ and enacted to be absolute-  
“ fice, place, or employment, “ ly incapable of sitting,  
“ touching or concerning the “ voting, or acting as a mem-  
“ farming, managing, or col- “ ber of the house of com-  
“ lecting the customs, such “ mons, in such parliament.”  
“ person is hereby declared



## Sect. 8.

(For cases of  
resignation of  
offices, see post,  
sect. 10.)

At the time of the election, sir *Richard Allen* held the office of collector of the great and petty customs in the port of *Yarmouth*, for his life; but surrendered that office on the 7th February; the surrender was enrolled on the 8th, and he took his seat on the 9th. The question was, whether he was disqualified under the above statute.

The house, after debate, resolved, that he should be admitted to take his seat in the house.

21 Journ. 138,  
139.  
A contrary de-  
cision.

On the other hand, in the case of *Bedford*, 16th April, 1728, Mr. *Ougley*, the petitioner, having an office in the customs, and no surrender of the office *before the election* appearing, it was objected to him, that he was disabled by the stat. 12 & 13 W. 3. c. 10.; whereupon, the committee and the house resolved, "that Mr. *Ougley* having an office, &c. at the time of the election, was incapable of claiming to sit for the said borough."

1 Doug. 97,  
161. 133. 142.

In the case of *Milborne Port*, 1775, it was objected to Mr. *Luttrell*, that he was ineligible upon the ground of his holding by deputy, the office of customer inwards in the port of *Bristol*, and his case was argued upon the distinction above pointed out; but the fact of his en-



joying the office not being clearly substantiated, the decision, which was in his favour, is not one of authority.

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Under the inconsistency of the only two decided cases upon the subject, it is necessary to advert to the wording of the statutes; their difference in this particular has been already noticed; and it is to be presumed, that in cases of doubt, statutes restrictive of the common law, would not in their construction be extended beyond the fair import of the letter. (See ante, 166.)

The next statute to be adverted to, is that of the 6 Ann. c. 7. (a), which, by § 25, after

(a) The stat. 6 Ann. c. 7. “ *and five*, have been created  
“ *An act for the security of* “ or erected, or hereafter  
“ *her majesty's person and go-* “ shall be created or erected,  
“ *vernment, and of the suc-* “ nor any person who shall  
“ *cession to the crown of Great* “ be a commissioner, or sub-  
“ *Britain in the protestant* “ commissioner of prizes, se-  
“ *line.*” “ cretary or receiver of the

§ 25. “ And be it further “ prizes, nor any comptroller  
“ enacted, by the authority “ of the accounts of the  
“ aforesaid, That no person “ army, nor any commis-  
“ who shall have in his own “ sioner of transports, nor  
“ name, or in the name of “ any commissioner of the  
“ any person or persons in “ sick and wounded, nor any  
“ trust for him, or for his “ agent for any regiment, nor  
“ benefit, any new office or “ any commissioner for any  
“ place of profit whatsoever “ wine licences, nor any go-  
“ under the crown, which at “ vernor or deputy governor  
“ any time since the *five-and-* “ of any of the plantations,  
“ *twentieth day of October,* “ nor any commissioners of  
“ *in the year of our Lord* “ the navy employed in any  
“ *one thousand seven hundred* “ of the out ports, nor any  
“ person having any pension



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(See sect. 9.)

making the general disqualification which will be explained hereafter, enacts, that no

Commissioner,  
secretary, or  
receiver of  
prizes;

Commissioner or sub-commissioner of prizes;  
secretary or receiver of prizes;

comptroller of  
army accounts;

Nor any comptroller of the accounts of the  
army;

commissioner  
of transports;

Nor any commissioner of transports;

commissioner  
of the sick and  
wounded;

Nor any commissioner of the sick and  
wounded;

agent for a re-  
giment;

Nor any agent for any regiment;

commissioner  
for wine li-  
cences;

Nor any commissioner for any wine licences;

governor or  
deputy gover-  
nor of planta-  
tions;

Nor any governor, or deputy governor, of  
any of the plantations;

commissioner  
of the navy  
employed at  
the out ports;

Nor any commissioner of the navy, em-  
ployed in any of the out-ports;

respectively  
disqualified to  
be elected, or  
to sit or vote.

shall be capable of being elected, or of sitting  
or voting as a member of the house of com-  
mons.

“from the crown during plea-  
“sure, shall be capable of  
“being elected, or of sitting  
“or voting as a member of  
“the house of commons, in  
“any parliament which shall  
“be hereafter summoned and  
“holden.”

§ 26. “Provided always,  
“That if any person being

“chosen a member of the  
“house of commons, shall  
“accept of any office of pro-  
“fit from the crown during  
“such time as he shall con-  
“tinue a member, his election  
“shall be, and is hereby de-  
“clared to be void, and a  
“new writ shall issue for a  
“new election, as if such



By § 29, the election and return of persons by that act disabled, or declared to be incapable, is to be altogether void; and such persons presuming to sit or vote as members of the house of commons, are to forfeit £500, to be recovered by such person as shall sue for the same, in manner therein directed.

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Election and return of such persons void, and if they presume to sit or vote, they incur 500<sup>l</sup>. penalty.

“ person so accepting was naturally dead: Provided nevertheless, That such person shall be capable of being again elected, as if his place had not become void as aforesaid.”

§ 27. “ Provided also, and be it enacted, That in order to prevent for the future too great a number of commissioners to be appointed or constituted for the executing of any office, that no greater number of commissioners shall be made or constituted for the execution of any office, than have been employed in the execution of such respective office, at some time before the first day of this present parliament.”

§ 28. “ Provided also, That nothing herein contained shall extend, or be construed to extend, to any member of the house of commons, being an officer in her majesty's navy or army, who shall receive any new or other commis-

sion in the navy or army respectively.”

§ 29. “ And be it further enacted, That if any person hereby disabled or declared to be incapable to sit or vote, in any parliament hereafter to be holden, shall nevertheless be returned as a member to serve for any county, shire, city, town, or cinque port, in any such parliament, such election and return are hereby enacted and declared to be void, to all intents and purposes whatsoever; and if any person disabled, or declared incapable by this act to be elected, shall, after the dissolution or determination of this present parliament, presume to sit or vote as a member of the house of commons in any parliament to be hereafter summoned, such person so sitting or voting shall forfeit the sum of five hundred pounds, to be recovered by such person as shall sue for



## Sect. 8.

A further disqualification of persons in office was created by the statute of the 15 Geo. 2. c. 22. § 1. (a), whereby

Commissioners  
of the revenue  
in Ireland;

The commissioners of the revenue in *Ireland*;

“ the same in *England*, by  
“ action of debt, bill, plaint,  
“ or information, wherein no  
“ essoin, protection, or wager  
“ of law shall be allowed,  
“ and only one imparlance.”

§ 30. “ And be it further  
“ enacted and declared, That  
“ every person disabled to be  
“ elected, or to sit or vote in  
“ the house of commons of  
“ any parliament of *England*,  
“ shall be disabled to be  
“ elected, or to sit or vote in  
“ the house of commons of  
“ any parliament of *Great  
“ Britain*.”

§ 31. “ And be it further  
“ enacted, by the authority  
“ aforesaid, That no person  
“ who now is a commissioner  
“ for disposing the sum of  
“ three hundred ninety-eight  
“ thousand and eighty-five  
“ pounds ten shillings, and  
“ all other sums arising to  
“ *Scotland* by way of equivalent,  
“ upon the agreements  
“ and to the purposes mentioned in the articles of  
“ union of the two kingdoms,  
“ shall, for or by reason of  
“ such commission, or any  
“ other commission for disposing the said equivalent,

“ or any part thereof, or the  
“ execution of any such  
“ commission, or any thing  
“ relating thereunto, be disabled from being elected a  
“ member of parliament, or  
“ sitting or voting as such in  
“ this or any future parliament.”

(a) The statute 15 Geo. 2. c. 22. “ *An act to exclude certain officers from being members of the house of commons.*”

“ For further limiting or  
“ reducing the number of officers capable of sitting in  
“ the house of commons; Be  
“ it enacted by the king’s  
“ most excellent majesty, by  
“ and with the advice and  
“ consent of the lords spiritual and temporal, and  
“ commons, in this present  
“ parliament assembled, and  
“ by the authority of the  
“ same, That from and after  
“ the dissolution, or other determination, of this present  
“ parliament, no person who  
“ shall be commissioner of  
“ the revenue in *Ireland*, or  
“ commissioners of the navy,  
“ or victualling offices, nor  
“ any deputies or clerks in



Commissioners of the navy or victualling of-  
fices ;

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commissioners  
of the navy or  
victualling of-  
fices ;

Deputies or clerks, in the above offices ;

deputies or  
clerks, in such  
offices, or of  
the lord high  
treasurer, or  
commissioners  
of the treasury ;

Or in the offices, of the lord high treasurer, or  
the commissioners of the treasury ;

Or of the auditor of the receipt of his ma-  
jesty's exchequer ;

or in the of-  
fices of the au-  
ditor,

Or of the tellers of the exchequer ;

or of the tel-  
lers,

Or of the chancellor of the exchequer ;

or of the chan-  
cellor, of the  
exchequer ;

Or of the lord high admiral, or the commis-  
sioners of the admiralty ;

or of the lord  
high admiral,  
or commission-  
ers of the ad-  
miralty ;

Or of the paymasters of the army or navy ;

or of the pay-  
masters of the  
army or navy ;

Or of his majesty's principal secretaries of  
state ;

or of the secre-  
taries of state ;

Or of the commissioners of the salt ;

or of the com-  
missioners of  
salt,

“ any of the said offices, or  
“ in any of the several offices  
“ following; that is to say,  
“ the office of lord high trea-  
“ surer, or the commissioners  
“ of the treasury, or of the  
“ auditor of the receipt of his  
“ majesty's exchequer, or of  
“ the tellers of the exchequer,  
“ or of the chancellor of the  
“ exchequer, or of the lord  
“ high admiral, or the com-  
“ missioners of the admiralty,  
“ or of the paymasters of the  
“ army, or of the navy, or of  
“ his majesty's principal se-  
“ cretaries of state, or of the  
“ commissioners of the salt,  
“ or of the commissioners of  
“ the stamps, or of the com-



## Sect. 8.

or stamps,  
or appeals,

or wine li-  
cences,

or hackney  
coaches,

or hawkers and  
pedlars,

respectively  
disqualified to  
be elected, or  
to sit or vote.

Also civil and  
military offi-  
cers in Minor-  
ca or Gibralt-  
ar, except of-  
ficers in regi-  
ments there.

Election and  
return of such  
persons void;

Or of the commissioners of the stamps ;

Or of the commissioners of appeals ;

Or of the commissioners of wine licences ;

Or of the commissioners of hackney  
coaches ;

Or of the commissioners of hawkers and  
pedlars ;

are severally rendered incapable of being  
elected, or of sitting or voting, as members of  
the house of commons.

The disqualification was also extended at the  
same time to persons having offices civil or mi-  
litary, in *Minorca* or *Gibraltar*, except officers  
having commissions in any regiment there.

And by the same statute, § 2. the election and  
return of persons by that act disabled and de-

“ missioners of appeals, or of  
“ the commissioners of wine  
“ licences, or of the commis-  
“ sioners of hackney coaches,  
“ or of the commissioners of  
“ hawkers and pedlars, nor  
“ any person having any of-  
“ fice, civil or military, with-  
“ in the island of *Minorca*, or  
“ in *Gibraltar*, other than of-  
“ ficers having commissions  
“ in any regiment there only,  
“ shall be capable of being  
“ elected, or of sitting or vot-  
“ ing as a member of the

“ house of commons, in any  
“ parliament which shall be  
“ hereafter summoned and  
“ holden.”  
§ 2. “ And be it further  
“ enacted, by the authority  
“ aforesaid, That if any per-  
“ son hereby disabled or de-  
“ clared to be incapable to  
“ sit or vote in any parlia-  
“ ment hereafter to be holden,  
“ shall nevertheless be re-  
“ turned as a member to  
“ serve for any county, stew-  
“ artry, city, borough, town-



clared to be incapable, is to be altogether void; and such persons presuming to sit or vote as members of the house of commons, are liable to a forfeiture of £20 for every day in which they shall so sit and vote, to any person that will sue for the penalty; and are thenceforth incapacitated for any office of honor or profit under the crown.

Sect. 8.

penalty if they  
presume to sit  
or vote.

It is declared, by § 3, that this statute is not to extend, or be construed to extend, or relate to, or exclude,

The act not to  
exclude cer-  
tain officers.

The treasurer or comptroller of the navy;

“ cinque port, or place, in  
“ parliament, such election  
“ and return are hereby en-  
“ acted and declared to be  
“ void to all intents and pur-  
“ poses whatsoever; and if  
“ any person disabled and  
“ declared incapable by this  
“ act to be elected, shall, af-  
“ ter the dissolution or other  
“ determination of this pre-  
“ sent parliament, presume  
“ to sit or vote as a member  
“ of the house of commons,  
“ in any parliament to be  
“ hereafter summoned, such  
“ person so sitting or voting  
“ shall forfeit the sum of  
“ twenty pounds for every  
“ day in which he shall sit  
“ or vote in the said house of  
“ commons, to such person  
“ or persons who shall sue  
“ for the same in any of  
“ his majesty's courts at  
“ *Westminster*, and the mo-  
“ ney so forfeited shall be  
“ recovered by the person so  
“ suing, with full costs of  
“ suit, in any of the said  
“ courts, by action of debt,  
“ bill, plaint, or information,  
“ in which no essoin, privi-  
“ lege, protection, or wager  
“ of law, shall be allowed,  
“ and only one imparlance;  
“ and shall from thenceforth  
“ be incapable of taking,  
“ holding, or enjoying, any  
“ office of honour or profit  
“ under his majesty, his heirs  
“ or successors.”

§ 3. “ Provided always,  
“ and it is hereby enacted  
“ and declared by the au-  
“ thority aforesaid, That no-  
“ thing in this act shall ex-  
“ tend, or be construed to ex-  
“ tend or relate to, or ex-  
“ clude the treasurer or  
“ comptroller of the navy,  
“ the secretaries of the trea-



## Sect. 8.

Nor the secretaries of the treasury (*a*) ;

Nor the secretary to the chancellor of the exchequer ;

Nor the secretaries of the admiralty ;

Nor the under secretary to any of his majesty's principal secretaries of state (*b*) ;

Nor the deputy paymaster of the army (*c*) ;

" sury, the secretary to the  
" chancellor of the exche-  
" quer, or secretaries of the  
" admiralty, the under secre-  
" tary to any of his majesty's  
" principal secretaries of  
" state, or the deputy pay-  
" master of the army, or to  
" exclude any person having  
" or holding any office or em-  
" ployment for life, or for so  
" long as he shall behave  
" himself well in his office,  
" any thing herein contained  
" to the contrary notwith-  
" standing."

(*a*) There were then only two secretaries of the treasury.

(*b*) The exception of the *under secretary* to any of his majesty's principal secretaries of state, being in the singular number, it seems, that although there are now two under secretaries in each department, it would not be consistent with the act for more than one belonging to the same office to be in parliament. But it should seem

(particularly as there were three secretaries of state, at the time of passing the act) that the exception would hold as to one in each office. Upon another ground it might perhaps be considered that the statute of the 22 Geo. 3. chap. 82, abolishing the office of third secretary of state, or secretary of state for the colonies (by § 1.), and declaring (by § 2.) that if any office of the same name, description, or purpose, of those abolished, should be established, the same should be deemed a *new* office, consequently imparts the same character to the office of under secretary in that department. To this point the case of Mr. Dundas, 7th November, 1797, *post*, sect. 9. is material.

(*c*) The exception of the deputy paymaster of the army being also in the singular number, it seems therefore that only one of the two can sit in parliament at once.



Nor any person having or holding any office for life, or during good behaviour.

Sect. 8.

Act not to exclude persons having office for life, or during good behaviour.

There are also several offices, which probably might have been considered as disqualifying (under the general rule of the statute of 6 Ann. c. 7. which will be the subject of the following section), but which, by way of further precaution, have been expressly enacted and declared so to do.

By the statute 39 & 40 Geo. 3. c. 87. § 24 (a), (which, by the stat. 47 Geo. 3. sess. 1. c. 37. § 1. was to be in force until the 25th of March, 1814, and which having then expired, was revived by the stat. 54 Geo. 3. c. 187. § 1 (b), and by § 38. of the same act, is to continue in force until the 1st day of June, 1820, and until the expiration of six weeks from the commencement of the then next session of parliament), the special justices of the peace appointed to act at the *Thames* police office, are, by the adoption of the 32 Geo. 3. c. 53. § 13 (c), made incapable of being elected, or of sitting as members of the house of commons. And by the stat. (d) 54 Geo. 3. c. 37. § 14. (which by § 24 of the act is

Justices at the *Thames* police office disqualified.

(a) For so much of this statute as relates to the subject of elections, see *post*, part 2. chap. 1. page 297.

(b) For this stat. see *post*. 300.

(c) For this stat. see *post*. 298.

(d) The stat. 54 Geo. 3.



## Sect. 8.

Justices at the  
seven public  
police offices  
disqualified.

to continue in force for the above mentioned period), the justices at the seven public police offices are disqualified in like manner.

c. 37. "An act for repealing  
"an act made in the fifty-first  
"year of his present majesty,  
"for the more effectual ad-  
"ministration of the office of  
"a justice of the peace, in such  
"parts of the counties of Mid-  
"dlessex and Surrey, as lie in  
"and near the metropolis, and  
"for making other provisions  
"in lieu thereof; to continue  
"in force until the first day of  
"June, one thousand eight  
"hundred and twenty, and  
"from thence until the expira-  
"tion of six weeks from the  
"commencement of the then  
"next session of parliament."

[17th December, 1813.]

(§ 1. Repeals the 51 Geo.  
3. c. 119. which had repeal-  
ed the former stats. 42 Geo.  
3. c. 76. and 47 Geo. 3. sess.  
2. c. 42.)

§ 2. "And be it enacted,  
"that the several public of-  
"fices now established in the  
"following places, namely,  
"the parishes of Saint Mar-  
"garet, Westminster; Saint  
"James, Westminster; Saint  
"Andrew, Holborn; Saint  
"Leonard, Shoreditch; Saint  
"Mary, Whitechapel; and  
"Saint Paul, Shadwell, in the  
"county of Middlesex, and  
"the parish of Saint Saviour,  
"in the borough of South-  
"wark, in the county of  
"Surrey, shall be continued,  
"and the several persons ap-

"pointed by his majesty to  
"execute the office of justice  
"of the peace at each of the  
"said offices, by virtue of the  
"said act, shall continue to  
"execute the same, together  
"with such other justices of  
"the peace for the said  
"counties respectively as  
"may think proper to at-  
"tend."

§ 3. "And be it further  
"enacted, That it shall and  
"may be lawful for his ma-  
"jesty, from time to time,  
"upon any vacancy in any  
"of the said offices, by death  
"or otherwise, to appoint  
"other fit and proper per-  
"sons, being justices of the  
"peace of the said counties  
"of Middlesex and Surrey re-  
"spectively, to execute the  
"duties of the said office in  
"his place," &c. (*The rest  
of this clause regulates the at-  
tendance.*)

§ 14. "Provided always,  
"and be it enacted and de-  
"clared, That no justice of  
"the peace appointed as  
"aforesaid, shall, during the  
"continuance in such ap-  
"pointment, be capable of  
"being elected, or of sitting  
"as members of the house of  
"commons."

See *post*, 300. for more of  
this statute.



By the statute 45 Geo. 3. c. 91. § 7. (a), the commissioners appointed under that act for examining and auditing the public extraordinary accounts, are incapable of being elected or of sitting as members of the house of commons.

Sect. 8.

Commissioners  
for auditing  
public ac-  
counts disqua-  
lified.

So, by the statute 46 Geo. 3. c. 80. § 18. (b),

(a) The stat. 45 Geo. 3. c. 91. "*An act for appointing additional commissioners for the better examining and auditing certain of the public accounts of Great Britain.*"

(§ 1. Authorizes his majesty to appoint three commissioners as an additional board for examining and auditing public extraordinary accounts, under direction of the treasury.)

§ 7. "And be it further enacted and declared, That no commissioner to be appointed by virtue of this act shall, during his continuance in such office, be capable of being elected, or of sitting as a member of the house of commons."

(b) The stat. 46 Geo. 3. c. 80. "*An act to provide for the more effectual examination of accounts of the expenditure of the public money in the West Indies, and for the better discovery of*

*frauds and abuses therein.*"

(§ 1. Enacts that the powers given to the commissioners appointed under the statute 41 Geo. 3. c. 22. shall cease.)

(§ 2. Empowers his Majesty to appoint five commissioners for inquiring into the abuses, and examining the accounts of persons concerned in supplying provisions, or in the expenditure of the public money in the *West Indies*, and on the continent of *South America*, and for other purposes therein mentioned.)

§ 18. "And be it further enacted and declared, that no commissioner to be appointed by virtue of this act, who shall receive any salary for the execution of his duty as such commissioner, shall, during his continuance in such office, be capable of being elected, or of sitting as a member of the house of commons."



## Sect. 8.

Commissioners  
for examina-  
tion of the ac-  
counts of pub-  
lic expenditure  
in the West  
Indies, disqua-  
lified.

the commissioners for the examination of the accounts of the expenditure of the public money in the *West Indies*, who receive any salary for the execution of their duty as commissioners, are likewise thus incapacitated;

Commissioners  
for auditing  
public ac-  
counts under  
the 46 Geo. 3.  
c. 141. disqua-  
lified.

As are also, by the statute 46 Geo. 3. c. 141. § 22. (a), the ten commissioners under that act, for examining and auditing the public accounts.

Commissioners  
of woods and  
forests, &c.  
disqualified,  
except one.

With respect to the commissioners of the wood and forests, appointed under the statute

(a) The stat. 46 Geo. 3. c. 141. "*An act for making more effectual provision for the more speedy and regular examination and audit of the public accounts of this kingdom.*"

§ 2. "And be it enacted, that at any time within two months after the passing of this act, it shall and may be lawful for his majesty, his heirs and successors, by letters patent under the great seal of the united kingdom, to nominate and appoint such number of persons, including therein the persons who shall at that time hold the situation of commissioners for auditing the public accounts, as

"shall make the number of such commissioners amount to ten in the whole, who shall thenceforth be the commissioners for auditing the public accounts of this kingdom, and shall hold their offices during good behaviour," &c. (*The rest of this section points out the powers of the commissioners.*)

§ 22. "Provided always, and be it enacted and declared, That no commissioner, appointed or to be appointed, by virtue of this act, shall, during his continuance in such office, be capable of being elected, or of sitting as a member of the house of commons."



50 Geo. 3, c. 65 (a), by § 21 of the act, any one of such commissioners may be elected and sit in parliament.

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This enactment is qualified with a proviso, that only one of such commissioners shall be capable of being so elected, or of so sitting or voting, at the same time; but the act, as between such commissioners, has left it uncertain what the law would be, in the case of more than one of them being elected, whether the election of one or both would be invalid (b).

Which of such commissioners may sit undefined.

By the stat. 54 Geo. 3, c. 157, § 2 (c), the

(a) The stat. 50 Geo. 3. c. 65. "*An act for uniting the offices of surveyor-general of the land revenues of the crown, and surveyor-general of his majesty's woods, forests, parks, and chases.*"

(§ 1. Authorizes his majesty to appoint "commissioners of his majesty's woods, forests, and land revenues.")

§ 21. "And be it further enacted, That any one of the said commissioners may be elected and chosen, and may sit and vote as a member of the house of commons of the united parliament of Great Britain and Ireland, any thing in any act or acts of parliament to the contrary notwithstanding: Provided always, That only one of such commissioners shall be capable of being so elected, or of so sitting and voting, at the same time."

(b) This event might very

possibly occur at a general election, and in such case it might be extremely difficult to decide, whether the elections of each must not be respectively avoided; or whether the person chosen first in point of time, would be entitled to retain his seat; or whether, supposing one of the persons elected under such circumstances to be willing to abandon his election, the other could, in point of law, continue to sit, without a re-election, more particularly if the person abandoning his election were chosen first. The same difficulty might arise with respect to the under secretaries of state, or deputy-paymasters of the army. (See *ante*, 182, and n. (a) and (b) there).

(c) The stat. 54 Geo. 3. c. 157. "*An act for the better regulation of the conduct of the business of the office of works, and the expenditure thereof.*" [A. D. 1814.]



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Surveyor-general of the works disqualified.

surveyor-general of his majesty's works, is declared incapable of being elected, or of sitting and voting in parliament (a).

(By § 1, the stat. 22 Geo. 3, c. 82, § 6 and 12, so far as related to the appointment of a surveyor of his majesty's works being (*bonâ fide* by profession an architect or builder), and to the rules and methods therein directed to be observed, with regard to all works which might therefore have been done by the board of works, for his majesty's service, and to the payment of the expence incurred thereby, is repealed.)

§ 2. "And be it further enacted, That from and after the passing of this act, it shall be lawful for his majesty to appoint, during his royal pleasure, any fit and proper person to be surveyor-general of his majesty's works and public buildings, whether the expence of such works and public buildings shall be defrayed out of his majesty's civil list revenues, or out of any funds granted by parliament, or out of any part of the public revenue heretofore usually included in the incidental charges of such department; and to grant to such surveyor-general such salary as his majesty may think fit, not exceeding one thousand five hundred pounds *per annum*; and the said surveyor-general during the holding of the said office shall be and he is

"hereby declared to be incapable of being elected into, or of sitting and voting in parliament."

(a) There have been from time to time, different acts of parliament authorizing official appointments, and at the same time restricting such appointments upon vacancies to persons not being members of the house of commons, wherein the acts imposing such restriction, have made no prospective provision that persons holding such offices should not be elected, or sit in parliament.

This was the case with regard to the appointment of commissioners for inquiring into naval abuses, under the statute 43 Geo. 3, c. 16, § 8; for military inquiry, under the statute 45 Geo. 3, c. 47, § 12; for examining the accounts of the office of barrack-master-general, under the statute 47 Geo. 3, c. 13, § 7.

It should therefore appear, that in such cases, although the nomination of a member of the house of commons to the office would be illegal, yet that a person already appointed to the office is not disqualified to be elected, or to sit in parliament, unless indeed such appointment can be considered to fall within the prohibition of the statute of 6 Ann. c. 7, § 25.



## Sect. 9.

SECTION 9. *Of disqualification at the statute law, by reason of holding any new office.*

BY the statute 6 Ann. c. 7. § 25. (a), no person having, in his own name, or in the name of any person or persons in trust for him, or for his benefit, any new office, or place of profit (b) whatsoever under the crown, created or erected since the 25th day of October, 1705, is capable of being elected, or of sitting or voting, as a member of the house of commons; that statute

Persons having new offices of profit under the crown, disqualified.

(For this statute see ante, 175.)

(a) It had been provided, by the stat. 12 & 13 W. 3. c. 2. § 3, that after the limitation of the crown in that act should take effect, no person having an office or place of profit under the king, or receiving a pension from the crown, should be capable of serving as a member of the house of commons. This exclusion being considered to be too general, the statute 4 Ann. c. 8. § 25, reciting this clause, repealed it before it took effect, and a disqualifying clause was introduced, similar to that in the subsequent statute of the 6 Ann. c. 7, in which it was re-enacted in the same words. (See *ante*, 175.)

Upon the beginning of the first parliament after the union with *Scotland*, in which, by the queen's proclamation of the 29th April, 1707 (15 Journ. 392.), the same persons were continued members

of the house of commons as had been of the preceding parliament, the house resolved, 10th November, 1707, (15 Journ. 396.), that "every person who, by an act of the first session of the last parliament, &c. (6 Ann. c. 7.) is disabled from and after the dissolution or determination of the said parliament, to sit or vote as a member of the house of commons, in any parliament to be thereafter holden, is by virtue of the said act, incapable of sitting or voting as a member of the house of commons in this present parliament." They then ordered lists of persons holding certain disqualifying offices to be laid before the house. And, in pursuance of the above resolution, afterwards ordered new writs in the room of members so disqualified.

(b) It does not appear that



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at the same time, by § 27, forbidding the appointment of a greater number of commissioners to any office, than had been employed therein at some time before the first day of that parliament, (*i. e.* 14th June 1705.) By § 28, the act does not apply to commissions in the army or navy.

For the purpose of giving the fullest effect to the operation of this law, the house of commons has twice addressed the throne, to cause lists to be laid before them of offices which had been created since the 25th October, 1705. The first of these addresses was on the 16th February, 1729 (*a*); the other on the 15th February,

21 Journ. 441.

any cases under this section have turned upon the question of whether they were offices of profit, but under the 26th section (for which see *ante*, 176.), where an office has appeared to be of no profit, the acceptance of the same has not vacated the seat.

17th January, 1717. Lord *Middleton* (lord chancellor of *Ireland*) desired the sense of the house, whether he was incapacitated to sit, in respect of his being continued in a commission for *Ireland*; which commission had been renewed since his election, but was an office of no profit. The stat. 6 Ann. c. 7. § 26, was read, and the sense of the

house appearing to be that he was not within the meaning of that act, he came into the house. 18 Journ. 671. According to what is stated by Mr. Hatsell, 2d vol. 37, the appointment was that of one of the lords justices of *Ireland*.

(*a*) Resolved, "That an humble address be presented to his majesty, that he will be graciously pleased to direct the proper officers to lay before this house an account of what offices or employments under the crown have been erected since the 25th day of October, 1705, with what salaries have been annexed thereto, the dates of the first commission, and the



1779 (a). And upon the latter occasion, it was ordered (b) by the house, that there should be laid before them an account of the offices and employments under the crown, existing on the 25th day of October, 1705, the number of officers therein, and their salaries, and also an account of the number and names of officers in each department, as they stood on the 5th of January preceding the order; which lists were returned accordingly.

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37 Journ. 142,  
143.

Under the above general provision, every person holding any new office, or place of pro-

name or names of the person or persons who now possess the same."

(a) This resolution was almost *verbatim* the same as that of 1729.

(b) Ordered, "That there be laid before this house an account of the offices and employments under the crown, existing on the 25th day of October, 1705, the number of officers employed at that time in each, with their respective salaries; and also an account of the number and names of the officers in each department, with their salaries, as they stood on the 5th day of January last, distinguishing the time when any increase in the number of such officers, or their salaries, was first made."

The lists of offices which were returned from the several departments, in obedience to the respective orders above mentioned, are deposited among the records and documents of the house of commons (in the custody of the clerk of the papers). It was found impossible to abbreviate them so as to compress them within a moderate compass, otherwise the substance would have been here given. The return made upon the former of these addresses, from the offices of the customs, excise, post-office, salt-office, stamp-office, hawkers and pedlars office, hackney coach office, and some others, are set forth in the Journal of the 3d April, 1730. 21 Journ. 526.

With respect to any office



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fit under the crown, is disqualified, and most of the offices which have been created since the day mentioned in the act, have been tacitly left by the legislature within its operation.

With regard to some few offices which might be doubtfully circumstanced in this respect, the law has expressly declared, that they should be deemed to be new. And again with regard to some others, which might fall within the prohibition of the statute, the law has laid down an exception in their favour.

We shall *first* advert to offices respecting which questions have arisen under the statute 6 Ann. c. 7. § 25.; *secondly*, to offices expressly declared to be new; and, *thirdly*, to offices excepted from the operation of the statute 6 Ann. c. 7. § 25.

1. As to offices respecting which questions have arisen under the statute of 6 Ann. c. 7. § 25.

16 Journ. 486.  
488.

In the case of sir *William Gifford*, 10th and 12th February, 1710, a question was made, whe-

in respect of the date of the establishment of which any question should arise, the information contained in the returns would afford a decisive answer upon that head.



ther, being governor of *Greenwich* hospital, he was capable within this statute; but when the house had examined into the constitution of the hospital, he came into the house and took his place.

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Governor of Greenwich hospital not disqualified under the 6 Ann. c. 7. § 25.

In the cases of sir *Joseph Martyn*, and Mr. *Murray*, 17th and 19th April, 1714, who had been appointed commissaries to treat with commissaries of *France*, for settling the trade between *Great Britain* and *France*, by her majesty's commission, dated 13th December, 1713, it was moved, that such office was a "new office, created or erected since the 25th day of October, 1705;" but the motion was negatived (189 to 115).

17 Journ. 574. 577.

Commissaries to treat with commissaries from France for settling the trade, not disqualified under the 6 Ann. c. 7. § 25.

In the case of Mr. *Carpenter*, 7th July, 1715, the house came to a similar conclusion, upon his being appointed envoy to *Vienna* (a).

18 Journ. 205. Envoy to a foreign court not disqualified under the 6 Ann. c. 7. § 25. (See ante, 157.)

(a) From the terms in which the question was put, it should seem that it was framed upon § 26. of the act, rather than upon § 25.; but if the office were not within the meaning of § 26. so as to vacate, *a fortiori*, it would not be within § 25. so as to disqualify.

upon his acceptance of the office of conservator of the privileges of the *Scots* nation in the *Netherlands*, and resident there for the affairs of *Scotland*. 29 Journ. 185.

In the case of Mr. *Lind*, 19th February, 1762, a new writ was ordered in his room,

In the case of Mr. *Jeffery*, 27th January, and 6th February, 1809, a new writ was ordered in his room (upon the authority of the preceding case), on his acceptance of the office of consul-general to her



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23 Journ. 473.  
 Secretary to  
 court of assist-  
 ants for relief  
 of widows of  
 officers of the  
 navy, estab-  
 lished by com-  
 mission under  
 the great seal,  
 1732, not dis-  
 qualified under  
 the 6 Ann. c. 7.  
 § 25.

In the case of Mr. *Corbett*, 20th February, 1739, a motion was made for a new writ, he having “accepted a salary of £200 *per annum*, by his majesty’s royal sign manual, dated the 14th August, 1739, as secretary to the court of assistants for relief of poor widows of commis- sioned and warrant officers of the royal navy, established by virtue of a commission under the great seal, bearing date the 30th August, 1732.”

Upon the question, the motion was negatived (223 to 132).

Agent for Cey-  
 lon, *quære* whe-  
 ther disquali-  
 fied under the  
 6 Ann. c. 7.  
 § 25.

With respect to the office of agent for the island of *Ceylon*, the election and return of Mr. *Huskisson* for the borough of *Liskeard* (a), in 1806, was petitioned against, upon the ground (amongst others) of his disqualification by rea- son of his holding this office. The question made upon the trial of the petition was, whe- ther this office came within the meaning of the

Most Faithful Majesty, for her  
 dominions in *Europe*.

Both of these latter cases  
 appear to have been grounded

upon § 26.; but they are men-  
 tioned here, as aiding the  
 construction of the statute of  
 Anne.

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(a) *The case of the borough of Liskeard in the county of Cornwall.*

The committee was appointed on the 17th of February, 1807, and consisted of the following persons :



statute of 6 Ann. c. 7. § 25. as being a new office of profit under the crown.

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The office was admitted to be a new one. It has a salary paid out of the revenues of the

JOHN KYNASTON POWELL, Esq. Chairman.

Sir Charles Morice Pole, Bart.

Sir Charles Morgan, Bart.

Edward Berkeley Portman, Esq.

John Maitland, Esq.

Michael Symes, Esq.

Joseph Cripps, Esq.

John Hodgson, Esq.

Edward Leveson Gower, Esq.

John Trevanion Parnell Bettesworth Trevanion, Esq.

Richard Long, Esq.

Charles Edmonstone, Esq.

Robert Haldane Bradshaw, Esq.

Thomas Creevey, Esq.

The Right Hon. Charles Long, } Nominees.

Petitioners—*Nicholas Tomlinson*, and *Alexander Nowell*, Esqrs.

Sitting Members—The Hon. *William Elliot*, and *William Huskisson*, Esq.

Counsel for the Petitioners—Mr. Dallas, Mr. Pell, Mr. Cabell.

Counsel for the sitting Members—Mr. Serjeant Lens, Mr. Plumer, Mr. Abbott.

The petition of Mr. *Tomlinson*, and Mr. *Nowell* (which had been presented 31st December, 1806), after stating that they,



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island; the appointment is made by the government of the island, in consequence of directions from the secretary of state for the war

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as well as Mr. *Elliot* and Mr. *Huskisson*, were candidates, and that they, the said Mr. *Tomlinson* and Mr. *Nowell*, ought to have been returned as having the legal majority, alleged, that Mr. *Huskisson* was, at the time of such election, such a pensioner or placeman under the crown and government as is disqualified to sit as a member in the house.

There was also an allegation, that due notice was given at such election, as well to the returning officer, as to other persons who voted for Mr. *Huskisson*, of his disqualification, previously to their so voting, and that if they voted for him their votes would be thrown away.

There was likewise an allegation, that the returning officer had been unduly influenced by Mr. *Elliot* and Mr. *Huskisson*.

The last determination of the right of election was read from the Journal of the 11th May, 1804, whereby it was resolved to be in "the mayor and burgesses of the said borough."

The counsel for the petitioners then proceeded in support of the petition.

The only allegation which it was seriously attempted to substantiate, was that which aimed at the disqualification of Mr. *Huskisson*, by reason of his holding a new office within the meaning of the statute 6 Ann. c. 7. § 25.



and colonial department. Under these circumstances, it was proposed, on the part of the petitioners, to disqualify Mr. *Huskisson*. But the

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The point which might have arisen, with respect to votes being lost, in consequence of notice of Mr. *Huskisson*'s disqualification in the event of a decision against his seat, the judgment of the committee being in favour of his election, did not present itself.

With respect to the disqualification of Mr. *Huskisson*, the case made on the part of the petitioners rested on the following grounds.

The office in question was that of *agent for the island of Ceylon*, with a salary of £800 *per annum*.

There was no doubt of the office being a *new* one, created since the 25th of October, 1705. It was also contended to be an office of profit from the crown, and that upon the facts proved before the committee, it was sufficiently shewn, that Mr. *Huskisson* was in possession of the office.

With respect to the office, it appeared that the appointment is made by the governor of *Ceylon*, or the governor and council there, (it was not spoken to with certainty which); and that the nomination takes place, upon a letter from the secretary of state for the war and colonial department, recommending the person to be named. It further appeared, that there had been instances in some of the colonies, but not in *Ceylon*, wherein such recommendations had not been attended to by the governors, and other persons had been appointed instead of the persons so recommended. The agent is paid out of the revenues of the colony. It was not distinctly stated from what source, in the event of a deficiency



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(See page 199,  
n. (a).)

evidence whereby it was attempted to shew that he was in possession of the office, proving insufficient, the committee decided that he was duly elected, without coming to the point of disqualification.

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of the revenue of the island, his pay would be made up, whether by the crown, or by the East India Company.

With respect to Mr. *Huskisson's* appointment, it was in evidence, that a letter, bearing date 2d February, 1806, had been transmitted by Mr. *Windham*, as secretary of state, to general *Maitland*, the governor of *Ceylon*, requesting him to cause the name of Mr. *Huskisson* to be placed on the list of the civil establishment of the island, as colonial agent. To this letter no answer had been received at the time of the trial of the petition; so that whether the above letter from the secretary of state had, or had not, been followed by the appointment of Mr. *Huskisson* to the office, could not be positively shewn; though there was every reason to suppose it would have been attended to; and Mr. *Huskisson* had in fact acted upon such supposition, having done some official acts.

Under the above circumstances, the committee (on the 19th February) resolved, that Mr. *Huskisson* was duly elected. They also resolved, that the petition against him was not frivolous or vexatious.

With respect to Mr. *Elliot*, against whom no evidence was offered, they resolved, that he was duly elected; and that the petition against his election was frivolous and vexatious. See 62 Journ. 27. 130. 140.



There have been also questions under this clause of the statute of Anne, with respect to some other offices (*a*), the consideration of

(*a*) See the case of Mr. Dundas, *post*, and the cases of *Fife, Lanerk, and North Berwick*, referred to in the section of this chapter relating to *Scotland*.

It may be proper here to observe, that the line which seems to be drawn, under 6 Ann. c. 7. § 26. as to whether a seat is vacated or not by acceptance of an office from the crown, is, whether the appointment is *immediately* from the crown; if so, the seat is vacated: if the appointment is not *immediately* from the crown, as in the case of the clerk of the pells (see 2 Hats. 44.), the secretaries of the treasury, under secretaries of state, &c. the seat is not vacated upon accepting the office. The two sections, § 25 and 26, though not exactly similar in the words, the former having the expression, office, &c. *under the crown*, the latter having that of office, &c. *from the crown*, are so far analogous in their nature, as to make it probable that the construction of the one would be the guide for that of the other.

(*For the offices which have been considered to vacate, see the indexes to the Journals, "Elections—Writs issued in the room of members accepting offices."*) Hereupon

it is not immaterial to observe the language of the 42 Geo. 3. c. 116. § 185, for preventing disqualification by the office of commissioner for the redemption or sale of land-tax, viz. that it shall not be deemed a place or employment of profit *under his majesty, notwithstanding the appointment shall be by warrant under the royal sign manual*, but that the same shall be deemed a place or employment under the authority of that act. (See *post* 206, n.)

As to commissions for a particular purpose, such as for ascertaining the boundaries of the *New Forest*, and of the lands of the crown, under the 39 and 40 Geo. 3. c. 86. and 41 Geo. 3. c. 108, and for similar purposes in *Windsor forest*, under the 46 Geo. 3. c. 143, and 47 Geo. 3. sess. 2. c. 46, and commissions of the like nature, it is a question of great importance, whether persons appointed by his majesty under such acts (his majesty being so empowered in some instances originally, as in the 46 Geo. 3. c. 143. § 1.; in others upon vacancies only, as in the 41 Geo. 3. c. 108. § 2.) would be disqualified from sitting. See also stat. 44 Geo. 3. c. 106. § 7. ap-



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which belongs to another part of this chapter,

2. As to offices expressly declared to be new:

There are certain offices, which have been abolished by law, but of which the legislature, contemplating the possibility of the revival, has been careful to declare, that in such event these offices will in law be new, which precludes any doubt from the circumstance of their having been in existence on the 25th of October, 1705.

The statute of the 22 Geo. 3. c. 82.

pointing commissioners of inquiry into offices in *Ireland*, continued by 49 Geo. 3. c. 51. and several acts therein recited.

It may be said, on the one hand, that employments of this sort are but temporary in their nature, and that they were not contemplated by the statute of 6 Ann. c. 7. § 25.; on the other, it may be contended, that they are decidedly within the mischief of the statute, and that it was intended to meet every possible case.

With respect to the stewardship of the Three Chiltern

Hundreds, or of the manor of East Hendred, Mr. Hatsell, 2d vol. 41, observes, that the practice of issuing a new writ in the room of members accepting them, which began, he believes, about the year 1750, has been so long acquiesced in from its convenience to all parties, that it would be ridiculous to state any doubt about the legality of the proceeding; otherwise he mentions his belief that it would be found very difficult, from the form of these appointments, to shew that they were offices of *profit, granted by the crown*.



§ 1. (a), reciting that his majesty, from certain motives therein expressed, had been pleased to order that the offices; of third secretary of

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Offices of, third secretary of state, board of trade, lords of

(a) The stat. 22 Geo. 3. c. 82. "An act for enabling his majesty to discharge the debt contracted upon his civil list revenues, and for preventing the same from being in arrear for the future, by regulating the mode of payments out of the said revenues, and by suppressing or regulating certain offices therein mentioned, which are now paid out of the revenues of the civil list."

§ 1. "Whereas his majesty, from his paternal regard to the welfare of his faithful people, from his desire to discharge the debt on his civil list, without any new burthen to the public, for preventing the growth of a like debt for the future, as well as for introducing a better order and œconomy in the civil list establishments, and for the better security of the liberty and independency of parliament, has been pleased to order, that the office commonly called or known by name of third secretary of state, or secretary of state for the colonies; the office or establishment commonly known by the name and description of the board of

"trade and plantations; the office of lords of police in Scotland, the principal officers of the board of works, the principal officers of the great wardrobe, the principal officers of the jewel office, the treasurer of the chamber, the cofferer of the household, the offices of the six clerks of the board of green cloth, the office of paymaster of the pensions, the office of master of the harriers and fox-hounds, and also the office of master of the stag-hounds, should be suppressed: Wherefore, for carrying his majesty's said gracious order into execution, may it please your majesty, that it may be enacted, and be it enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the passing of this act, the office commonly called or known by the name of third secretary of state, or secretary of state for the colonies; the office or establishment commonly cal-



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police in Scotland; of principal officers, of board of works, great wardrobe, and jewel office; of the treasurer of the chamber, of the cofferer of the household; of the six clerks of the board of green cloth, of the paymaster of pensions, of the masters of the harriers, fox-hounds, and stag-hounds, abolished.

state, or secretary of state for the colonies; of the board of trade and plantations; of lords of police in *Scotland*; of the principal officers of the board of works; of the principal officers of the great wardrobe; of the principal officers of the jewel office; of the treasurer of the chamber; of the cofferer of the household; of the six clerks of the board of green cloth; of the paymaster of the pensions; of the master of the harriers; of the master of the fox-hounds; and of the master of the stag-hounds, should be suppressed; enacted, that all such offices, together with certain of the offices connected with, or dependant upon the same (of which a list was to be entered in the exchequer as therein directed),

“ led the board of trade and  
 “ plantations, the office of the  
 “ lords and gentlemen of po-  
 “ lice in *Scotland*, the princi-  
 “ pal officers of the board of  
 “ works, the principal officers  
 “ of the great wardrobe, the  
 “ principal officers of the  
 “ jewel office, the treasurer  
 “ of the chamber, the cofferer  
 “ of the household, the officers  
 “ of the six clerks of the  
 “ board of green cloth, the  
 “ office of paymaster of the  
 “ pensions, the offices of the  
 “ master of the harriers, the  
 “ master of the fox-hounds,  
 “ and the master of the stag-  
 “ hounds, and all every of

“ the offices aforesaid, toge-  
 “ ther with certain of the of-  
 “ fices dependant on or con-  
 “ nected with the same, of  
 “ which a list shall be entered  
 “ in the exchequer, by certi-  
 “ ficate from the lords com-  
 “ missioners of the treasury,  
 “ on or before the tenth day  
 “ of October, one thousand  
 “ seven hundred and eighty-  
 “ two (which list the said lords  
 “ commissioners are hereby  
 “ directed to cause to be en-  
 “ tered as aforesaid), shall be,  
 “ and are hereby utterly sup-  
 “ pressed, abolished, and tak-  
 “ en away.”



should be utterly suppressed, abolished, and taken away.

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It was at the same time enacted and declared, by § 2, that if any office of the same name, nature, description, or purpose, of those thereby abolished, should be established thereafter, the same should be deemed and taken as a new office.

Any office of same name, nature, &c. with those so abolished, to be deemed new.

Under this statute, a question arose with respect to the office of secretary of state for the war department, in the case of Mr. *Dundas*, 7th November, 1797 (*a*), whether it did not dis-

53 Journ. 37.

§ 2. "And it is hereby further enacted and declared, "by the authority aforesaid, "That if any office of the "same name, nature, description, or purpose, of those "hereby abolished, shall be "established hereafter, the "same is and shall be deemed "and taken as a new office, "to all constructions, intents, "and purposes whatsoever."

(*a*) A motion was made, and the question being proposed, That the office of the secretary of state for the war department was, in addition to the office of secretary of state for the foreign and for the home department, first established on the 11th of July, 1794.

Mr. Secretary *Dundas* was

heard in his place, and then he withdrew.

And the question being put, it passed in the negative (139 to 8).

A motion was thereupon made, and the question being put, That the right hon. *Henry Dundas*, secretary of state for the war department, was, by accepting the said office, rendered incapable of being elected to serve in parliament, and ought not to sit in this house.

It passed in the negative.

The facts of this case, and the grounds of the decision of the house, appear from the parliamentary debates to have been as follow.



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Neither of the principal secretaries of state are disqualified under the statutes of 6 Ann. c. 7. § 25, and 22 Geo. 3. c. 82. § 1. and 2, but it seems more than two cannot sit in parliament.

qualify upon the ground that it was a new office, in consequence of the provisions of the statute 22 Geo. 3. c. 82. § 1. and 2, and therefore a *new* office within the statute of the 6 Ann. c. 7. § 25. The house having examined into the constitution and circumstances of the office, and it appearing that there had been such alterations in the arrangement of the of-

The office of third secretary of state, which was abolished by the statute 22 Geo. 3. c. 82, had been established in 1768, for the purpose of transacting the business with respect to *America*.

Mr. *Dundas* was appointed, in the year 1791, to be secretary of state for the home department. A new arrangement was afterwards made, the duke of *Portland* being appointed secretary of state, and taking the home department, and Mr. *Dundas* being directed to continue the military correspondence, and to conduct the business of secretary of state so far as related to this object, which had been carried on in the office for the home department.

Under this arrangement, the office of secretary of state for the war department was established, 11th July, 1794.

On the one hand it was contended, that the office which Mr. *Dundas* held came within the prohibition of the

22 Geo. 3. c. 82, and was therefore a new office; on the other hand, it was alleged that the business transacted in his department, was not such as had been carried on in the office abolished by that act; that he received no new appointment, upon the subdivision of the business of the office in which he was already; that by the appointment to the office of "one of his majesty's principal secretaries of state," either of the secretaries may act in either office, his majesty appointing them generally, and allotting the department to which each is to belong; that there being no division of the office of secretary of state by law, it is impossible to say that any particular secretary is the third secretary, and that the law is complied with, as long as there are in the whole only two secretaries of state in the house of commons. (See *ante*, 182, n. (b).)



fices of the secretaries of state, as to make it impossible to say, which was the new office, although one of the three must have been so; and there being only two secretaries of state in the house; decided that Mr. *Dundas* was not disqualified.

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The stat. 57 Geo. 3. c. 63 (a), which was

(a) The stat. 57 Geo. 3. c. 63. "*An act to regulate the offices of clerks of the signet and privy seal.*"

[7th July, 1817.]

"Whereas it is expedient that the respective offices of clerks of the signet and of clerks of the privy seal should be regulated; be it therefore enacted, &c. "That from and after and upon the respective terminations of the respective existing interests in each of the said offices of clerks of the signet and privy seal respectively, and as each of the said offices shall become vacant, upon the termination of such present existing interests, the duties of the said offices respectively shall be executed and performed by the several and respective persons who shall be appointed to execute the same in person."

(The intervening § 2, 3, 4, provide for the future establishment and regulation of the offices, and the appropriation of the savings thereby.)

\*

§ 5. "And be it further enacted, That every office and appointment belonging to and making part of the establishment of any of the said offices respectively, when so regulated as afore-said under the provisions of this act, shall be deemed and taken to be a new office within the true intent and meaning of an act passed in the sixth year of the reign of her late majesty queen Anne; and every person holding any such office shall be incapable of sitting or voting as a member of the house of commons; and every such officer who shall sit or vote in the house of commons shall be liable and subject to the penalties and forfeitures contained in an act passed in the fifteenth year of the reign of his late majesty king George the Second, intituled *An act to exclude certain officers from being members of the house of commons.*"



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Clerkship in the signet office, when regulated under act, to be deemed a new office.

So a clerkship in the privy seal office.

passed to regulate the offices of clerks of the signet and privy seal, (and by § 1 of which the duties of those offices are, after the termination of the existing interests, to be executed in person), enacts by § 5, that every office and appointment belonging to and making part of the establishment of any of the said offices, when regulated under the provisions of that act, is to be deemed and taken to be a new office under the act of the 6 *Ann.* and that every person holding any such is to be incapable of sitting or voting in the house, and to be liable, if he do so, to the penalties and forfeitures in the stat. 15 Geo. 2. c. 22 (a).

The stat. 57 Geo. 3. c. 84 (b), has, by § 1, a

(a) *Ante*, 178 to 182.

(b) The stat. 57 Geo. 3. c. 84, "*An act to regulate the offices of his majesty's exchequer in England and Ireland respectively.*"

[10th. July, 1817.]

"Whereas the offices of auditors and tellers of his majesty's exchequer in England and Ireland respectively, and of clerks of the pells in England and Ireland respectively, are offices with respect to which it is expedient that a more economical execution of the duties thereof respectively, after the termination of the present existing interests therein respectively, should be adopted:" may it therefore please your ma-

jesty that it may be enacted; and be it enacted, &c. "That the several and respective duties of the several and respective offices of auditor, and of each of the four tellers of his majesty's exchequer, and clerk of the pells in England, and of auditor and of teller of his majesty's exchequer, and clerk of the pells in Ireland, shall, from and after and upon the respective terminations of the respective present existing interests in each of the said offices respectively, and as each of the said offices shall become vacant upon the termination of such present existing interests, be regulated under the provisions of this



similar provision with respect to the execution in person of the offices of auditors and tellers of the exchequer in *England*, and *Ireland* respectively, and of clerks of the pells in *England*, and *Ireland* respectively; and by § 5, a corresponding enactment, that every office and appointment belonging to, and making part of the establishment of any of these offices when regulated under the act, shall be deemed and taken to be a new office, with the same incapacity for parliament, and liability to the penalties of the 15 Geo. 2. c. 22.

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Offices of auditor and teller of the exchequer in *England* and *Ireland*, when regulated under act, to be deemed new. So those of clerk of the pells in *England* and *Ireland*.

With respect to offices excepted from the operation of the stat. 6 Ann. c. 7. § 25. In the

“act, and thereafter be executed and performed by the several and respective persons appointed to execute the same in person.”

(The intervening § 2, 3, 4, provide for the future establishment and regulation of the offices, and the appropriation of the savings thereby.)

§ 5. “And be it further enacted, That every office and appointment belonging to and making part of the establishment of any of the said offices respectively, when so regulated as aforesaid, shall be deemed and taken to be a new office within the true intent and meaning of an act passed in the sixth year of the reign of her late majesty

queen *Anne*; and every person holding any such office shall be incapable of sitting or voting as a member of the house of commons; and every such officer who shall sit or vote in the house of commons shall be liable and subject to the penalties and forfeitures contained in an act passed in the fifteenth year of the reign of his late majesty king *George* the Second, intituled *An act to exclude certain officers from being members of the house of commons.*”

(By § 6. Persons appointed to the said offices when established according to the act, are to have the same interest as if granted by letters patent during good behaviour.)



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(*Ante*, 163, 164, 186.)

No disqualification by offices mentioned, as not vacating.

former part of this section, when adverting to the rule by which a seat in parliament is vacated by the acceptance of any office of profit from the crown, some legislative exceptions were stated, as to certain offices which might otherwise have been considered as within that rule. These exceptions, while they avert the operation of the 26th section of the statute, must also counteract the disqualification of the 25th section, inasmuch as if the seat is declared not to be vacated, it clearly follows that there can be no disqualification. There are other exceptions to the disqualification, which are express.

By the stat. 42 Geo. 3. c. 116. § 185. (a) the

(a) The stat. 42 Geo. 3. c. 116. “*An act for consolidating the provisions of the several acts passed for the redemption and sale of the land tax, into one act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at elections for knights of the shire, and other members to serve in parliament, in respect of messuages, lands, or tenements, the land tax upon which shall have been received or purchased.*”

[26th June 1802.]

(§ 1. Recites the several acts for making perpetual, and for the redemption of the land-tax, viz. the 38 Geo. 3. c. 60, the 39 Geo. 3. c. 6, the 39 Geo. 3. c. 21, the 39 Geo.

3. c. 40, the 39 Geo. 3. c. 43, the 39 Geo. 3. c. 108, the 39 & 40 Geo. 3. c. 30, the 41 Geo. 3. c. 28, and the 41 Geo. c. 72.)

§ 185. “And be it further enacted, That the acceptance of any commission from his majesty, in pursuance of the said recited acts, or any of them, or of this act, shall not vacate the seat of any person returned to serve in parliament, nor shall the election of any person who hath accepted, or who shall accept any such commission, be in any manner impeached thereby, or made void, any law or statute to the contrary notwithstanding: Provided always, That the acceptance of the office of a



office of a commissioner for the redemption or sale of land-tax under several acts is not to vacate a seat in parliament, and not to be deemed a place or employment of profit under his majesty, though the appointment shall be under the royal sign manual, but a place under the authority of the act. So, in the stat. 42 Geo. 3. c. 89. (a), for vesting certain lands in trustees, for promoting the service of his majesty's ordnance at *Woolwich*, it is provided, by § 12, that the commissioners appointed by his majesty, by letters patent, to hear and determine claims to premises taken under that act, shall not be disqualified from sitting in the house of commons.

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Office of commissioner for redemption of land-tax neither vacates nor disqualifies.

Commissioners for determining claims under the 42 Geo. 3. c. 89, not disqualified.

The stat. 57 Geo. 3. c. 66. § 1. (b), authorizing the grant of a salary not exceeding 2000*l.* to the vice-president of the board of trade, pro-

Office of vice president of board of trade, with a salary, not to be deemed

“ commissioner for the re-  
 “ demption or sale of land-  
 “ tax, under the said recited  
 “ acts, or this act, shall not,  
 “ by reason of any allowance  
 “ for executing the same, be  
 “ deemed, taken, or construed  
 “ to be a place or employ-  
 “ ment of profit under his ma-  
 “ jesty, notwithstanding the  
 “ appointment shall be by  
 “ warrant under the royal  
 “ sign manual, but that the  
 “ same shall be deemed,  
 “ taken, and construed to be  
 “ a place or employment un-  
 “ der the authority of this act,  
 “ to all intents and purposes,  
 “ and shall not impeach any  
 “ claim or title which such  
 “ commissioners may have to  
 “ any other allowance what-  
 “ ever under his majesty.”

(a) See also 43 Geo. 3. c. 35 and 65, 44 Geo. 3. c. 78 and 79, and 49 Geo. 3. c. 97, for similar purposes, which contain similar exceptions.

(b) The stat. 57 Geo. 3. c. 66. “ *An act to amend an act of the twenty-second year of his present majesty, for suppressing or regulating certain offices therein mentioned, so far as relates to the board of trade; and for enabling the vice-president of the board of trade to send and receive letters and packets free from the duty of postage.*”

[7th July, 1817.]

“ Whereas an act passed  
 “ in the twenty-second year  
 “ of the reign of his present  
 “ majesty, intituled, *An act*



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new, or to vacate seat.

vides that it shall not by reason thereof be deemed a new office, nor the seat be vacated.

SECTION 10. *What possession of an office there must be in order to disqualify.*

A mere title to a disqualifying office will not disqualify without enjoyment.

IN order to substantiate an objection, by reason of holding a disqualifying office, the actual enjoyment of the office must be shewn; a mere title thereto, if never acted upon by taking possession, will not disqualify.

“for enabling his majesty to  
 “discharge the debt contracted  
 “upon his civil list revenues,  
 “and for preventing the same  
 “from being in arrear for the  
 “future, by regulating the  
 “mode of payments out of the  
 “said revenues, and by sup-  
 “pressing or regulating cer-  
 “tain offices therein mentioned  
 “which are now paid out of  
 “the revenues of the civil list:  
 “And whereas it is expedient  
 “to make provision for en-  
 “abling his majesty to grant  
 “a competent salary to the  
 “person holding the office of  
 “vice-president of the com-  
 “mittee of council appointed  
 “for the consideration of  
 “matters relating to trade  
 “and foreign plantations, in  
 “consideration of the duties  
 “and responsibility attached  
 “to the said office;” “be it  
 “therefore enacted, &c. That  
 “it shall be lawful for his  
 “majesty, by any order or  
 “warrant under his royal  
 “sign manual, countersigned  
 “by the lord high treasurer,  
 “or by the commissioners of  
 “his majesty’s treasury of  
 “the united kingdom of  
 “Great Britain and Ireland,  
 “or any three or more of  
 “them for the time being,  
 “to order and direct that the  
 “vice-president of the com-  
 “mittee of council, ap-  
 “pointed for the considera-  
 “tion of matters relating to  
 “trade and foreign planta-  
 “tions, for the time being,  
 “shall have a salary not  
 “exceeding two thousand  
 “pounds, to be paid and  
 “payable out of the fee fund  
 “of the council office; and  
 “such office shall not, by  
 “reason of such salary being  
 “annexed thereto, be deem-  
 “ed a new office: Provided  
 “always, that no such order  
 “or warrant, or receipt of  
 “salary under the same by  
 “the person holding such  
 “office at the time of pass-  
 “ing this act, shall make  
 “void the election of any  
 “such person, nor shall any  
 “new writ issue for a new  
 “election in consequence of  
 “any such order, or war-  
 “rant, or receipt of salary  
 “under the same; any thing  
 “in any act or acts to the  
 “contrary notwithstanding.”



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Neither will a grant in reversion of such an office so operate, during the interval between the granting and the falling in of the reversion.

26th February, 1710. Sir *John Anstruther*, 16 Journ. 519. upon the death of his father, became entitled to an office in the customs (*a*), which had been granted to his father, and his heirs male. Before he accepted the office, he desired the opinion of the house, whether the office was of such a nature as would incapacitate him from sitting therein. The house resolved (10th April, 1711), that the office was within the statute 12 and 13 W. 3. c. 10.; but that sir *John Anstruther*, not having taken, enjoyed, or executed, the same, was capable of being a member of the house (*b*). 16 Journ. 588.

In the case of Mr. *Anstis*, 8th April, 1714, 17 Journ. 559. who had the reversion of the office of garter principal king of arms, &c. granted to him, after the determination of the letters patent then in being to sir *Henry St. George*, the sense of A reversionary grant of a disqualifying office will not disqualify till the office devolves upon the grantee.

(*a*) The office was that of Inspector and Searcher of all prohibited and uncustomed goods, and Keeper of the cockets in the ports of *Ely* and *Anstruther*, in *North Britain*; but as it is a case of general principle, it was considered more fit to introduce it here than to reserve it for the 14th section.

(*b*) Mr. *Hatsell*, 2d vol. p. 39, mentions the case of Mr. *Morris*, member for *Rye*, who had an office in reversion, but upon its becoming vacant, and upon his succeeding to it, immediately resigned it; consequently his seat was never vacated.



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the house was taken, whether he was thereby disabled from sitting; and they were unanimous, that notwithstanding the said grant of the reversion, he might continue to be of the house (a).

If there be a doubt as to the possession of the office, whereupon the grantee is sought to be disqualified, he will have the benefit of that doubt, it being incumbent on the party alleging the disqualification to lay a foundation for it, by shewing possession of the office, either by positive evidence, or by strong presumption.

Where there is a doubt as to the possession of the office, the decision will be against disqualification. (For this case, see *ante*, 194.)

*Liskeard*, 1806, and 1807. Mr. *Huskisson* was petitioned against, upon the ground of his holding the office of agent for *Ceylon*. It appeared that the appointment is made in the island, upon a letter from the secretary of state for the war and colonial department, recommending the per-

(a) There are several precedents of reversionary grants of offices not vacating the seats, until they devolved upon, and were actually possessed by the reversionary grantees. See the cases of sir *Watkin Wynne*, 25th November, 1740, 23 Journ. 538, and of Mr. *Legge*, 7th December, 1759, 28 Journ. 676, of Mr. *Fox*, 25th November, 1762, and also several other instances collected, 2 Hats. 39.

In the above case of Mr. *Anstis*, upon the falling in of

the reversion, a new writ was moved for; but the matter being adjourned to a future day, and an adjournment of the house taking place in the interval, it was not resumed for near two years, when a new writ was ordered. See 18 Journ. 414, 415. 655, 27th and 28th March, 1716, 7th December, 1717. It seems doubtful whether this was a question of vacating or disqualification; but the principle hereupon would be the same.



son to be named; and that although there had been instances in some of the colonies, wherein such recommendations had not been attended to, there had been none such in *Ceylon*; that the letter recommending Mr. *Huskisson* for this appointment had been transmitted to the governor of *Ceylon*, a sufficient time for him to have received it, but his answer had not yet been received; Mr. *Huskisson*, however, had done some official acts, upon the supposition that the appointment had taken place. Under these circumstances, as well as those already noticed with respect to the nature of the office, the committee resolved that Mr. *Huskisson* was duly elected (*a*). (See ante, 197, B.)

(*a*) Without surmising in any degree that the decision would have been otherwise than it was, had the nature of the office been the only ground of decision, it may be proper to state, as applicable to the view of the case above taken, that it was generally understood at the time, that the possession of the office was considered as not sufficiently proved.

The circumstance of the possibility of the letter recommending Mr. *Huskisson*, not having been attended to by the governor, was peculiar to this case; but it should seem that, generally speaking,

the proof of a person's having acted in an office, would, without any evidence of his appointment, be sufficient to establish a case against him as to the possession of that office. This would be analogous to the doctrine of the case of *Bevan, q. t. v. Williams*, where, in an action for non-residence, evidence that the defendant did several acts as parson, such as receiving tithes, &c. was holden sufficient, without proving his admission, institution, and induction, 3 T. R. 635.

So, in an action on the post horse act, against an innkeeper, for penalties incurred,



## Sect. 10.

If a disqualifying office be resigned before the election, &c. it will not disqualify,

It need hardly be mentioned, that the disqualification may be removed by a resignation of the office (*a*). In such case, the question will be, whether the resignation have been made *bonâ fide*, and before the election (or before taking the seat, where the disqualification

it was holden not necessary to shew the licence of the defendant, but that, as against him other evidence was sufficient, as that he had written over his door, "Licensed to let post horses." *Radford*, q. t. v. *Briggs*, 3 T. R. 637. (See also *ib.* 632, *Radford*, q. t. v. *Mackintosh*.)

In the case of *Milborne Port*, 1 Doug. 97. 131. a disqualification was contended for against Mr. *Luttrell*, upon the ground of his holding an office in the customs; but there was no sufficient evidence of his receiving the profits, nor of his appointment, nor was the duty performed by him; and he was holden duly elected.

In the case of Mr. *Webb*, 28th and 29th March, 1715, a question arose as to an appointment, partly carried into effect before the election, but not completed till afterwards.

A warrant issued for his appointment as governor of the *Isle of Wight*. The warrant issued previous to the election, but the letters patent did not pass the great seal till

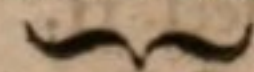
afterwards. He desired the opinion of the house in relation to his taking his place there; and the warrant and patent having been read, and the statute 6 Ann. c. 7. referred to, he took his place in the house. 18 Journ. 27. 30.

(*a*) In the case of Mr. *Montagu*, 13th February, 1698 (mentioned in 2 Hatsell, 34.), who was a commissioner of the stamp duties, it appears that he was left out of the commission in September, 1698, but that he acted till the 4th October in the same year; that the parliament was summoned for the 24th August, but prorogued till the 29th of November, when he qualified: wherefore he stated, that he conceived himself not to be within the law (*i. e.* at that time, the stat. 5 W. & M. c. 7. § 57.)

Upon the question, he was called in to take his place; and it was referred to a committee to draw up and state the matter of fact as it appeared upon the debate of the house. 12 Journ. 502. But it seems they made no report.



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is limited to the latter case); and if this appear to be the case, or even where the resignation is incomplete, from circumstances not within the controul of the person meaning to resign, it may be sufficient, provided he shall have done every thing on his part to divest himself of the office.

*Lanerkshire*, 1775 (a). Mr. *Stuart*, who held the office of joint king's remembrancer in the court of exchequer in *Scotland* (which it was contended would disqualify him), executed a deed of resignation, on the 18th of October, 1774, which was transmitted to the secretary of the treasury, and received by him on the 25th of October. The secretary thereupon mentioned the circumstance to the first lord of the treasury; but it was not laid before the board, the election taking place on the 28th October. Mr. *Stuart* was holden duly elected, the committee resolving, under the facts above stated, that he was, "at the time of his election, divested of the office (b)."

2 Doug. 367.  
35 Journ. 274.  
283.

Where a person holding a disqualifying office, and meaning to resign, takes proper measures on his part so to do in due time, he will not be disqualified.

(a) This being a case of general principle, and not depending particularly upon the law relating to *Scotland*, it is inserted here, although the office is a *Scots* office.

(b) The case of *Aberbrothock*, &c. 6th December, 1748, and 2d and 6th February, 1749, was stated on the part of the sitting member, where Mr. *Maitland*, who was sheriff-depute for the shire of *Edinburgh*, was objected to



## Sect. 11.

SECTION 11. *Of disqualification by reason of holding a pension from the crown.*

A person having a pension from the crown during pleasure, is disqualified.

UPON the same principle upon which many of the disqualifications already spoken of are founded, a person having any pension from the crown during pleasure, is, by the statute 6 Ann. c. 7. § 25. (a), made incapable of being elected, or of sitting or voting as a member of the house of commons; and, by § 29, is subjected to the penalty therein, if he presume so to sit or vote.

And the statute 1 Geo. 1. st. 2. c. 56. (b), which recites the above provision, to the end

upon his return, as disqualified under the stat. 21 Geo. 2. c. 19, by reason of holding that office; but Mr. Scot, the petitioner, withdrew his petition, upon the ground, it was said, that Mr. Maitland's having executed a *demission* (or resignation) ten days before the election, was on his part considered to be an answer to the objection. 25 Journ. 667. 710. 713.

(a) For this clause of the act, and the penalty upon persons sitting or voting who are disabled, see *ante*, 175. 177.

(b) The stat. 1 Geo. 1. stat. 2. c. 56. "*An act to disable any person from being chosen a member of, or from sitting and voting in, the house of commons, who has any pension for any number of years from the crown.*"

"Whereas by an act, intituled, *An act for the security of her majesty's person and government, and of the succession to the crown of Great Britain in the protestant line*, and made in the sixth year of the late queen Anne, it was provided, that no person having any pension from the crown during pleasure, should be capable of being elected, or of sitting or voting as member of the house of commons, in any parliament which should be then after summoned and holden; to the end therefore, that the provision intended by that law, for securing the honour of the house of commons, may not in future times be defeated or eluded by any person who shall be a member



that it may not be defeated or eluded by any member accepting any pension for any number or term of years, by § 1, enacts, That no person, having any pension from the crown for any term or number of years, either in his own name, or in the name or names of any other person or persons in trust for him, or for his benefit (*a*), shall be capable of being elected, or

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A person having a pension from the crown for a term or number of years, is disqualified.

(See also sect. 15.)

“ of the house of commons,  
 “ accepting any pension for  
 “ any term or number of  
 “ years ; Be it enacted, by the  
 “ king’s most excellent ma-  
 “ jesty, by and with the ad-  
 “ vice and consent of the lords  
 “ spiritual and temporal, and  
 “ commons, in this present  
 “ parliament assembled, and  
 “ by the authority of the  
 “ same, That no person hav-  
 “ ing any pension from the  
 “ crown for any term or num-  
 “ ber of years, either in his  
 “ own name, or in the name  
 “ or names of any other per-  
 “ son or persons in trust for  
 “ him, or for his benefit, shall  
 “ be capable of being elected  
 “ or chosen a member of, or of  
 “ sitting or voting as a mem-  
 “ ber of, this present or any  
 “ future house of commons,  
 “ which shall be hereafter  
 “ summoned.”

§ 2. “ And be it further  
 “ enacted, by the authority  
 “ aforesaid, That if any per-  
 “ son who shall have such  
 “ pension as aforesaid, at the  
 “ time of his being so elected,  
 “ or at any time after, during

“ such time as he shall con-  
 “ tinue or be a member of the  
 “ house of commons, shall  
 “ presume to sit or vote in  
 “ that house, then and in  
 “ such case, he shall forfeit  
 “ twenty pounds for every  
 “ day in which he shall so sit  
 “ or vote in the said house of  
 “ commons, to such person or  
 “ persons who shall sue for  
 “ the same, in any of his ma-  
 “ jesty’s courts in *Westmin-  
 “ ster-hall*; and the monies  
 “ so forfeited shall be reco-  
 “ vered by the person so su-  
 “ ing, with full costs of suit,  
 “ in any of the said courts,  
 “ by action of debt, bill,  
 “ plaint, or information, in  
 “ which no essoin, privilege,  
 “ protection, or wager of law,  
 “ shall be allowed, and only  
 “ one imparlance.”

(See new writs upon the ground of members accepting pensions. *Wareham*, 19th March, 1717, 18 Journ. 768. *Portsmouth*, 16th July, 1781, 39 Journ. 706.)

(*a*) It might be questionable, under the terms of this enactment, whether a person



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of sitting or voting as a member of the house of commons.

## Penalty.

By § 2. of the same act, any person having such pension, and presuming to sit or vote, forfeits £20 for every day in which he shall so sit or vote, to such person or persons as will sue for the same, in manner therein mentioned (*a*).

whose wife has a pension for years would be disqualified, as being in effect for his benefit. See the corresponding provision of the *Irish stat* 33 Geo. 3. c. 41. § 1, whereby such person is disqualified. Append. ccxxxi.

(*a*) On the 17th February, 1730, a bill passed the house of commons, "For making more effectual the laws in being for disabling persons from being chosen members of, or sitting or voting in the house of commons, who have any pension during pleasure, or for any number of years, or any offices holden in trust for them, by obliging persons thereafter to be chosen to serve for the commons in parliament, to take the oath therein mentioned," 21 Journ. 633. It was proposed by this bill, which did not pass in the house of lords, that the following oath should be taken by every member:

"I, *A. B.* do solemnly and sincerely swear, that I

have not, directly or indirectly, any pension during pleasure, or for any number of years, from the crown, nor any office in part, or in the whole, from the crown, held for me, or for my benefit, by any person whatsoever: And I do solemnly and sincerely promise and swear, that I will not receive, accept, or take, directly or indirectly, during the time of my being a member of this parliament, any pension during pleasure, or for any number of years, or any other gratuity or reward whatsoever, or any office from the crown, to be held for me, or for my benefit, in part or in the whole thereof, by any person whatsoever, without signifying the same to this house, within fourteen days after I have received or accepted the same, if the parliament be then sitting, or within fourteen days after the next meeting of the parliament. So help me God."



## Sect. 12.

SECTION 12. *Of disqualification by reason of holding contracts for the public service.*

ANOTHER disqualification, comparatively of recent introduction, is that which arises from being concerned in public contracts.

By the stat. 22 Geo. 3. c. 45. (a), any person, directly or indirectly, himself, or by any person in trust for him, or for his use or benefit,

Persons concerned in contracts for the public service, disqualified for

(a) The stat. 22 Geo. 3. c. 45. "An act for restraining any person concerned in any contract, commission, or agreement, made for the public service, from being elected, or sitting and voting as a member of the house of commons."

"For further securing the freedom and independence of parliament, be it enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this parliament assembled, and by the authority of the same, That, from and after the end of this present session of parliament, any person who shall, directly or indirectly, himself, or by any person whatsoever in trust for him, or for his use

"or benefit, or on his account, undertake, execute, hold, or enjoy, in the whole or in part, any contract, agreement, or commission, made or entered into, with, under, or from the commissioners of his majesty's treasury, or of the navy or victualling-office, or with the master-general or board of ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever, for or on account of the public service; or shall knowingly and willingly furnish or provide, in pursuance of any such agreement, contract, or commission, which he or they shall have made or entered into as aforesaid, any money to be remitted abroad, or any wares or merchan-



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 being elected,  
 or sitting or  
 voting as mem-  
 bers.

or on his account, undertaking, executing, holding, or enjoying, in the whole, or in part, any contract, agreement, or commission, made with, under, or from, the commissioners of the treasury, or of the navy, or victualling office, or with the master-general, or board of ordnance, or with any one or more of such commissioners, or with any other person or persons, for or on account of the public service, or knowingly furnishing or providing, in pursuance of any such agreement, contract, or commission, money to be remitted abroad, or any wares or merchandize to be used in the service of the public, is made incapable, as long as he is concerned in such contract, &c. of being elected, or of sitting or voting as a member of the house of commons.

Members en-  
 tering into  
 such contracts  
 to forfeit their  
 seats.

And, by § 2, if any member of the house of commons, directly or indirectly, himself, or by any person in trust for him, enter into such contract, &c. his seat is to be, and is thereby declared to be void.

“dize to be used or em-  
 “ployed in the service of the  
 “public, shall be incapable  
 “of being elected, or of sit-  
 “ting or voting as a member  
 “of the house of commons,  
 “during the time that he shall  
 “execute, hold, or enjoy,  
 “any such contract, agree-  
 “ment, or commission, or any  
 “part or share thereof, or

“any benefit or emolument  
 “arising from the same.”

§ 2. “And be it further  
 “enacted, by the authority  
 “aforesaid, That if any per-  
 “son, being a member of the  
 “house of commons, shall,  
 “directly or indirectly, him-  
 “self, or by any other person  
 “whatsoever in trust for him,  
 “or for his use or benefit, or



The act, by § 3, does not extend to contracts, &c. by any incorporated trading company, made in its corporate capacity; nor to any company then existing or established, and consisting of more than ten persons, where the contract, &c.

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Exception of incorporated trading companies, and of companies of more than ten persons, where

“ on his account enter into,  
 “ accept of, agree for, under-  
 “ take, or execute, in the  
 “ whole or in part, any such  
 “ contract, agreement, or  
 “ commission as aforesaid;  
 “ or if any person, being a  
 “ member of the house of  
 “ commons, and having al-  
 “ ready entered into any such  
 “ contract, agreement, or  
 “ commission, or part or share  
 “ of any such contract, agree-  
 “ ment, or commission, by him-  
 “ self, or by any other person  
 “ whatsoever in trust for him,  
 “ or for his use or benefit, or  
 “ upon his account, shall, af-  
 “ ter the commencement of  
 “ the next session of parlia-  
 “ ment, continue to hold,  
 “ execute, or enjoy the same,  
 “ or any part thereof, the  
 “ seat of every such person in  
 “ the house of commons shall  
 “ be, and is hereby declared  
 “ to be void.”

§ 3. “ Provided always,  
 “ and be it enacted, That no-  
 “ thing herein contained shall  
 “ extend, or be construed to  
 “ extend, to any contract,  
 “ agreement, or commission  
 “ made, entered into, or ac-  
 “ cepted, by any incorporated  
 “ trading company in its cor-

porate capacity, nor to any  
 “ company now existing or  
 “ established, and consisting  
 “ of more than ten persons,  
 “ where such contract, agree-  
 “ ment, or commission, shall  
 “ be made, entered into, or  
 “ accepted, for the general  
 “ benefit of such incorpora-  
 “ tion or company.”

§ 4. “ Provided also, and  
 “ be it enacted, That nothing  
 “ in this act contained shall  
 “ extend, or be construed to  
 “ extend, to any contract,  
 “ agreement, or commission,  
 “ made, entered into, or ac-  
 “ cepted, before the passing  
 “ of this act, the term where-  
 “ of will expire in the space  
 “ of one year from the time of  
 “ making thereof.”

§ 5. “ Provided also, and  
 “ be it enacted, That where  
 “ any contract, agreement, or  
 “ commission, has been made,  
 “ entered into, or accepted,  
 “ with a provision that the  
 “ same shall continue until a  
 “ year's notice be given of  
 “ the intended dissolution  
 “ thereof, the same shall not  
 “ disable any person from sit-  
 “ ting and voting in parlia-  
 “ ment, until one year after  
 “ the said notice shall be ac-



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the contract is  
for the general  
benefit of the  
country.

shall be made for the general benefit of such company.

By § 4 and 5, provisions were made with respect to certain existing contracts, which have now ceased to be material.

Provision for  
cases of exist-  
ing contracts  
devolving by  
operation of  
law.

By § 6, the act is not to extend to any person on whom the completion of any contract shall devolve by operation of law, as therein mentioned, until twelve calendar months after he shall have been in possession of the same.

“ tually given for the deter-  
“ mination of the said con-  
“ tract, agreement, or com-  
“ mission, or till after twelve  
“ calendar months, to be com-  
“ puted from the time of pass-  
“ ing this act.”

§ 6. “ Provided also, and  
“ be it enacted, That nothing  
“ herein contained shall ex-  
“ tend, or be construed to ex-  
“ tend, to any person, on whom,  
“ after the passing of this act,  
“ the completion of any con-  
“ tract, agreement, or commis-  
“ sion, shall devolve by descent  
“ or limitation, or by marriage,  
“ or as devisee, legatee, exe-  
“ cutor, or administrator, un-  
“ til twelve calendar months  
“ after he shall have been in  
“ possession of the same.”

§ 7. “ Provided also, and  
“ be it enacted, That any per-  
“ son who is now a member  
“ of the house of commons,  
“ and holds and enjoys any  
“ such contract, agreement,

“ or commission as aforesaid,  
“ may be discharged from the  
“ execution thereof on giving  
“ twelve months notice to the  
“ person or persons with or  
“ from whom such contract,  
“ agreement, or commission,  
“ is made, entered into, or ac-  
“ cepted, of his desire that the  
“ same shall cease and deter-  
“ mine; and such contract,  
“ agreement, or commission,  
“ after the expiration of the  
“ term aforesaid, shall be null  
“ and void.”

§ 8. “ Provided also, That  
“ if any person actually pos-  
“ sessed of a patent for a new  
“ invention, or a prolongation  
“ thereof by act of parlia-  
“ ment, and having contract-  
“ ed with government con-  
“ cerning the object of the  
“ said patent before the pass-  
“ ing of this act, shall give  
“ notice of his intention to  
“ dissolve the said contract,  
“ the same shall be null and



Of so much consequence did it appear to the legislature, that the spirit of this act should be fully and immediately acted up to, that by § 2, persons being members of the house of commons, and having already entered into such contract, &c. if they continued to hold the same after the commencement of the then next session of parliament, were to forfeit their seats; § 7. at the same time providing for them the means of determining such contract, if they should desire so to do; and § 8. empowering any persons to withdraw from certain contracts with government.

By § 9, the election and return of any per-

“ void from the time of giving  
“ such notice.”

§ 9. “ And be it further  
“ enacted, by the authority  
“ aforesaid, That if any per-  
“ son hereby disabled, or de-  
“ clared to be incapable to sit  
“ or vote in parliament, shall  
“ nevertheless be returned as  
“ a member to serve for any  
“ county, stewartry, city, bo-  
“ rough, town, cinque port,  
“ or place, in parliament,  
“ such election and return are  
“ hereby enacted and declared  
“ to be void; and if any per-  
“ son, disabled and declared  
“ incapable by this act to be  
“ elected, shall, after the end  
“ of this present session of  
“ parliament, presume to sit  
“ or vote as member of the

“ house of commons, such per-  
“ son so sitting or voting shall  
“ forfeit the sum of five hun-  
“ dred pounds for every day  
“ in which he shall sit or vote  
“ in the said house, to any  
“ person or persons who shall  
“ sue for the same in any of  
“ his majesty's courts at *West-*  
“ *minster*; and the money so  
“ forfeited shall be recovered  
“ by the person or persons so  
“ suing, with full costs of  
“ suit, in any of the said  
“ courts, by any action of  
“ debt, bill, plaint, or infor-  
“ mation, in which no essoin,  
“ privilege, protection, or wa-  
“ ger of law, or more than  
“ one imparlance shall be al-  
“ lowed; or by summary com-  
“ plaint before the court of

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Penalty on persons disabled by contracts, sitting.

son thereby disabled, or declared to be incapable to sit or vote in parliament, is void; and any such person presuming to sit or vote as a member of the house of commons, incurs a penalty of £500, for every day in which he shall sit or vote in the house.

Condition to be inserted in public contracts, that no member of the house of commons shall have any share or benefit.

The act also directs, by § 10, that in every such contract, &c. there shall be inserted an express condition, that no member of the house of commons shall be admitted into any share thereof, or benefit therefrom (thus precluding

“ session in *Scotland*; and  
 “ every person, against whom  
 “ any such penalty or forfeiture shall be recovered  
 “ by virtue of this act, shall  
 “ be from thenceforth incapable of taking or holding  
 “ any contract, agreement, or  
 “ commission, for the public  
 “ service, or any share thereof, or any benefit or emolument from the same, in  
 “ any manner whatsoever.”

§ 10. “ And be it enacted,  
 “ That in every such contract,  
 “ agreement, or commission,  
 “ to be made, entered into, or  
 “ accepted as aforesaid, there  
 “ shall be inserted an express  
 “ condition, that no member  
 “ of the house of commons be  
 “ admitted to any share or  
 “ part of such contract, agreement, or commission, or to  
 “ any benefit to arise therefrom; and that in case any  
 “ person or persons, who hath

“ or have entered into or accepted, or shall enter into  
 “ or accept, any such contract, agreement, or commission, shall admit any  
 “ member or members of the  
 “ house of commons to any  
 “ part or share thereof, or to  
 “ receive any benefit thereby,  
 “ all and every such person  
 “ and persons shall, for every  
 “ such offence, forfeit and pay  
 “ the sum of five hundred  
 “ pounds, to be recovered, with  
 “ full costs of suit, in any of  
 “ his majesty’s courts of record  
 “ at *Westminster*, by any person or persons who shall sue  
 “ for the same, by any action  
 “ of debt, bill, plaint, or information, in which no es-  
 “ soin, privilege, protection,  
 “ or wager of law, or more  
 “ than one imparlance, shall  
 “ be allowed; or by summary  
 “ complaint before the court  
 “ of session in *Scotland*.”



any possibility of ignorance of the law in the persons to be affected by it); and by the same clause, there is a penalty of £500 on any person or persons having such contract, and admitting any member or members of the house of commons to any share or benefit therein.

The penalties in the act are respectively given to any that will sue for them; and, by § 11, prosecutions must be commenced within twelve calendar months.

The stat. 39 Geo. 3. c. 94. § 5.(a), reciting that the covenants in the indenture usually made be- Master of the mint not disqualified.

§ 11. " Provided also, and  
" be it enacted, That no per-  
" son shall be liable to any  
" forfeiture or penalty inflict-  
" ed by this act, unless a pro-  
" secution shall be commen-  
" ced within twelve calendar  
" months after such penalty  
" or forfeiture shall be in-  
" curred."

(a) The stat. 39 Geo. 3.  
c. 94. " *An act to ascertain*  
" *the salary of the master and*  
" *worker of his majesty's*  
" *mint.*"

§ 5. " And whereas the co-  
" venants contained in the in-  
" denture usually made be-  
" tween his majesty and the  
" master and worker of his

" majesty's mint, are not in  
" the nature of a contract  
" coming within the meaning  
" and intention of an act,  
" passed in the twenty-second  
" year of the reign of his  
" present majesty, intituled,  
" *An act for restraining any*  
" *person concerned in any con-*  
" *tract, commission, or agree-*  
" *ment, made for the public*  
" *service, from being elected*  
" *or sitting and voting as a*  
" *member of the house of com-*  
" *mons*; Be it enacted, That  
" nothing in the said act shall  
" extend, or be construed to  
" extend, to any person hold-  
" ing the office of master and  
" worker of his majesty's  
" mint."



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tween his majesty, and the master or worker of the mint, are not within the nature of a contract coming within the meaning and intention of the above statute, of the 22 Geo. 3. c. 45, enacts, that nothing in that act shall extend, or be construed to extend, to the person holding such office.

Members or managers of the London flour company, not disqualified.

The stat. 39 & 40 Geo. 3. c. 97. (a), which incorporates the *London flour company*, enacts, by § 27, that no person who shall be a member, or manager, or other officer of the said company, shall, for that cause only, be disabled from being a member of parliament.

(a) The stat. 39 & 40 Geo. 3. c. 97. “*An act to incorporate certain persons, by the name of the London company for the manufacture of flour, meal, and bread, for a limited time.*”

(§ 1. Incorporates certain persons under the name in the title of the act, for the purposes therein mentioned.)

§ 27. “*Provided always, and be it further enacted, That no person who shall be a member, or a manager, or other officer of the said*

“*company, shall, for that cause only, be disabled from being a member of parliament\*, or shall, in respect of his share or shares therein, be, or be adjudged liable to be, a bankrupt, within the intent and meaning of all or any of the statutes made of or concerning bankrupts.*”

(§ 29. Provides that his majesty, by his order in council, may dissolve the company.) The company is still in existence.

\* It is not very obvious which of the disqualifying statutes persons concerned in this company might be supposed to come under. The exception is mentioned here, upon the idea, that it may have been imagined that they would have fallen within the statute 22 Geo. 3. c. 45.



SECTION 13. *Of disqualification by reason of bankruptcy.*

BY the stat. 52 Geo. 3. c. 144. § 1 (a), where-  
 ever a commission of bankruptcy shall be  
 awarded against any member of the house of  
 commons, and he shall be found and declared a  
 bankrupt under the same, he is incapacitated, for  
 the next twelve calendar months, from sitting or

Member be-  
 coming bank-  
 rupt disquali-  
 fied from sit-  
 ting or voting  
 during twelve  
 months, unless  
 commission sn-  
 perseded with-  
 in that time,  
 or creditors  
 fully paid.

(a) The statute 52 Geo. 3. c. 114. “*An act to suspend  
 “ and finally vacate the seats  
 “ of members of the house of  
 “ commons, who shall become  
 “ bankrupts, and who shall not  
 “ pay their debts in full within  
 “ a limited time.*” (23d July,  
 1812.)

“Whereas it is highly ne-  
 “ cessary, for the preserva-  
 “ tion of the dignity and in-  
 “ dependence of parliament,  
 “ that members of the house  
 “ of commons of the united  
 “ kingdom, who become bank-  
 “ rupts, and do not pay their  
 “ debts in full, shall not re-  
 “ tain their seats; Be it there-  
 “ fore enacted, by the king’s  
 “ most excellent majesty, by  
 “ and with the advice and  
 “ consent of the lords spi-  
 “ ritual and temporal, and  
 “ commons, in this present  
 “ parliament assembled, and  
 “ by the authority of the  
 “ same, That from and after

“ the passing of this act,  
 “ whenever a commission of  
 “ bankruptcy shall issue and  
 “ be awarded against any  
 “ person being a member of  
 “ the house of commons, and  
 “ he shall be found and de-  
 “ clared a bankrupt under the  
 “ same, such member shall  
 “ be and shall remain during  
 “ twelve calendar months from  
 “ the time of the issuing there-  
 “ of, utterly incapable of sit-  
 “ ting and voting in the said  
 “ house of commons, unless  
 “ within the said period such  
 “ commission shall be super-  
 “ seded, or unless within the  
 “ same period the creditors of  
 “ such member of the house  
 “ of commons proving their  
 “ debts under the commission  
 “ of bankruptcy shall be paid  
 “ or satisfied to the full amount  
 “ of their debts under the said  
 “ commission: Provided al-  
 “ ways, that such of the debts,  
 “ if any, as shall be disputed



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Disputed  
debts, if bank-  
rupt enter into  
security, &c.  
to be consider-  
ed as paid.

voting in the house, unless within that period the commission shall be superseded, or the creditors proving their debts shall be paid or satisfied the full amount of their debts under the commission; the same clause having a proviso, that such debts, if any, as shall be disputed by the bankrupt, if he shall, within the same time, enter into security according to the directions of the act, to pay such money as shall be recovered against him in law or equity, together with the costs, shall be considered, for the purposes of the act, as paid or satisfied.

If commission  
not superseded  
within twelve

By § 2. of the same statute, if the commission shall not within twelve calendar months be su-

“ by such bankrupt, if he  
“ shall, within the time afore-  
“ said, enter into a bond or  
“ bonds, in such sum or sums,  
“ with two sufficient sureties  
“ to be approved by the com-  
“ missioners under the said  
“ commission of bankruptcy,  
“ or the major part of them,  
“ to pay such sum or sums of  
“ money as shall be reco-  
“ vered in any action, suit,  
“ or other proceeding in law  
“ or equity, concerning such  
“ debt or debts, together with  
“ such costs as shall be given  
“ in the same, shall be consi-  
“ dered for the purposes of  
“ this act as paid or satis-  
“ fied.”

§ 2. “ And be it further  
“ enacted, by the authority  
“ aforesaid, that if the said  
“ commission shall not with-  
“ in twelve calendar months  
“ from the issuing thereof be  
“ superseded, nor the debts  
“ satisfied in manner afore-  
“ said, then the commission-  
“ ers, or the major part of  
“ them named in such com-  
“ mission, shall, and they are  
“ hereby required, immedi-  
“ ately after the expiration of  
“ twelve calendar months  
“ from the issuing of the said  
“ commission, to certify the  
“ same, as the case may  
“ be, to the speaker of the  
“ house of commons of the



perseded, nor the debts so satisfied, then the commissioners are required, immediately after the expiration of twelve calendar months from the issuing of the commission, to certify the same to the speaker, and thereupon the election of such member is to be void; and the speaker is authorized and required, during any recess, forthwith, after receiving such certificate, to cause notice thereof to be inserted in the *London Gazette*, and then, upon the expiration of fourteen days, to issue his warrant to the clerk of the crown, to make out a new writ in the room of such member: but the act does not empower the speaker to issue such warrant, unless such certificate shall have been delivered to him so long before the next meeting of the

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months, nor debts satisfied, commissioners to certify to speaker, and election to be void.

During recess, speaker, on receipt of certificate, to cause notice to be gazetted.

After fourteen days new writ to be issued, unless certificate delivered to speaker so long before

“ united kingdom, and there-  
 “ upon the election of such  
 “ member shall be and is  
 “ hereby declared to be void;  
 “ and it shall and may be  
 “ lawful for the speaker of the  
 “ house of commons for the  
 “ time being, during any re-  
 “ cess of the said house, whe-  
 “ ther by prorogation or ad-  
 “ journment, and he is hereby  
 “ required forthwith after re-  
 “ ceiving such certificate, to  
 “ cause notice thereof to be  
 “ inserted in *The London Ga-*  
 “ *zette*, and upon the expira-  
 “ tion of fourteen days after  
 “ the day of inserting such no-  
 “ tice in the *Gazette*, to issue

“ his warrant to the clerk of  
 “ the crown, to make out a  
 “ new writ for electing ano-  
 “ ther member in the room of  
 “ such member who shall  
 “ have so vacated his seat:  
 “ Provided always, that no-  
 “ thing herein contained shall  
 “ extend to enable the speaker  
 “ of the house of commons to  
 “ issue his warrant for the  
 “ purposes aforesaid, unless  
 “ such certificate shall have  
 “ been delivered to him so  
 “ long before the then next  
 “ meeting of the house of  
 “ commons for the dispatch  
 “ of business, as that the writ  
 “ for the election may be is-



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meeting of the house, &c. as that writ may be issued before.

Provisions of 24 Geo. 3. extended to such cases.

(See post, part 2. chap. 2.)

Disqualification by bankruptcy confined to persons in parliament becoming bankrupt.

house for the dispatch of business, as that the writ may be issued before that time (a).

And, by § 3. of the act, the provisions of the statute 24 Geo. 3. with respect to the issuing of writs during the vacancy of the office of speaker, or during his absence out of the realm, are extended to the case of seats so becoming vacant.

This disqualification is confined to the case of persons who being already in parliament become bankrupt. There is nothing in the act, which goes to incapacitate any other persons by reason of bankruptcy.

“sued before the day of such  
“next meeting of the house  
“of commons.”

§ 3. “And be it further  
“enacted, by the authority  
“aforesaid, that all and every  
“of the powers contained in  
“an act of the twenty-fourth  
“year of the reign of his pre-  
“sent majesty, for repealing  
“so much of two former acts,  
“as authorized the speaker  
“of the house of commons to  
“issue his warrant to the  
“clerk of the crown for mak-  
“ing out writs for the elec-  
“tion of members to serve in  
“parliament in the manner  
“therein mentioned, and for  
“substituting other provi-  
“sions for the like purposes,  
“so far as such powers en-  
“able the speaker of the  
“house of commons to nomi-  
“nate and appoint other per-

“sons, being members of the  
“house of commons, to issue  
“warrants for the making out  
“of new writs during the va-  
“cancy of the office of speak-  
“er, or during his absence  
“out of the realm, shall be,  
“and they are hereby made  
“to be in force, for the pur-  
“pose of enabling him to  
“make the like nomination  
“and appointment for issu-  
“ing warrants under the like  
“circumstances and condi-  
“tions, for the election of  
“members of parliament, in  
“the room of such whose  
“seats shall become vacant  
“under the provisions of this  
“act.”

(a) The provisions of the 24 Geo. 3. do not apply to vacancies arising from disqualifications, except that by peerage.



SECTION 14. *Scotland.*

THOSE of the disqualifications herein before mentioned, which existed with respect to elections in *England*, before the union with *Scotland*, are, by virtue of the statute of the 6 Ann. (Ante, 92.) c. 7. § 30, also operative with respect to elections in *Scotland*; those which have been subsequently created, are alike common to one and to the other. It is therefore only necessary, by way of supplement to what has been already stated in this chapter, to add some observations which belong more particularly to *Scotland*.

With respect to disqualification by reason of minority: (See ante, sect. 3.)

The act of union, of the 5 Ann. c. 8, by § 12, in regulating the representation for *Scotland*, expressly provides and declares, that none shall be capable to be elected, but such as are twenty-one years of age complete. *Append. cxvi.* *Minors disqualified.*

(a) With respect to disqualification at the (See ante, sect. 8.)

(a) With respect to disqualification by reason of bribery or treating: The statute of the 2 Geo. 2. c. 24, having been mentioned, it is to be observed,



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statute law, by reason of holding certain offices (a):

Acceptance of commissions in fencibles or militia of Scotland not to vacate seat, nor of commissions in corps raised in Great Britain, where officers (except adjutants and quarter-masters) have no half-pay, &c.

In the rule of the statute 6 Ann. c. 7. § 26, whereby a seat is vacated by acceptance of office, an exception is made with regard to the acceptance of commissions in corps of fencibles, raised or to be raised in *Scotland*, or in any corps to be raised any where in *Great Britain*, where none of the officers, except the adjutants and quarter-masters, shall be entitled to half-pay, or rank in the army after the reduction of the corps, by the stat. 33 Geo. 3. c. 36. § 1 (b).

that the 16 Geo. 2. c. 11. § 33. reciting that doubts had arisen whether that act extended to the electors of commissioners for choosing burghesses, enacts, that such electors are within the true intent and meaning of the said act, to be considered as electors of the member of parliament (Append. clxxiv.) The detail, however, of this subject, for the reasons before given, does not belong to this place. (See *ante*, 126.) See the stat. 49 Geo. 3. c. 118. (*ante*, 135.), which applies to elections in *Scotland*.

(a) For the case of sir *John Anstruther*, with respect to the office of inspector and searcher of all prohibited and uncustomed goods, and keeper

of the cockets in the ports of *Ely* and *Anstruther*, see *ante*, 209.

(b) The stat. 33 Geo. 3. c. 36. "An act to establish certain regulations respecting officers serving in several corps of fencible men, in that part of Great Britain called Scotland, and in certain other corps which may be directed to be raised in Great Britain."

"Whereas by the laws now in being for raising and training the militia within that part of Great Britain called England, it is provided, that the acceptance of a commission in the said militia shall not vacate the seat of any member returned to serve in parliament:



A similar exception is made with regard to acceptance of commissions in the militia of *Scotland*, by the stat. 42 Geo. 3. c. 91. § 167 (a).

To the offices mentioned as disqualifying, there is an additional disqualification by the

“ And whereas his majesty  
 “ has thought proper, for the  
 “ more effectual protection  
 “ and internal defence of that  
 “ part of *Great Britain* called  
 “ *Scotland*, to direct that fen-  
 “ cible men, in several of the  
 “ shires in that part of the  
 “ united kingdom, should be  
 “ forthwith raised and embo-  
 “ died: And whereas officers  
 “ serving in any of the said  
 “ corps of fencible men (the  
 “ adjutants and quarter-mas-  
 “ ters excepted) will not by  
 “ virtue of such service be en-  
 “ titled to receive half-pay, or  
 “ to have any rank in the ar-  
 “ my, after the said corps  
 “ shall have been dismissed  
 “ and disembodied, but will  
 “ be similar to, and as near  
 “ as may be on the same foot-  
 “ ing with officers serving in  
 “ the militia of *England*:  
 “ And whereas his majesty  
 “ may think proper to grant  
 “ commissions to officers to  
 “ raise corps for the defence  
 “ of this country, the officers  
 “ of which corps may like-  
 “ wise not be entitled to re-  
 “ ceive half-pay, or to hold  
 “ any rank in the army, after  
 “ the said corps shall have

“ been reduced and disembo-  
 “ died: Be it therefore enact-  
 “ ed,” &c. “ that the accept-  
 “ ance of a commission in any  
 “ corps of fencible men, raised  
 “ or to be raised in that part  
 “ of *Great Britain* called  
 “ *Scotland*, or in any other  
 “ corps which his majesty  
 “ may authorize and direct  
 “ to be raised in any part of  
 “ *Great Britain*, in which  
 “ none of the officers (except  
 “ the adjutants and quarter-  
 “ masters) shall, by virtue of  
 “ their commissions in the  
 “ said corps, be entitled to  
 “ half-pay, or to any rank in  
 “ the army after the reduc-  
 “ tion of the said corps, shall  
 “ not, nor shall be construed  
 “ to vacate the seat of any  
 “ member returned to serve  
 “ in parliament.”

(a) The stat. 42 Geo. 3.  
 c. 91. “ *An act to raise and  
 “ establish a militia force in  
 “ Scotland.*”

§ 167. “ And be it further  
 “ enacted, That the accept-  
 “ ance of a commission in the  
 “ militia, shall not vacate the  
 “ seat of any member return-  
 “ ed to serve in parliament.”



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Append. cxlvi.  
Judges of session, justiciary, or exchequer, in Scotland, disqualified to be elected, or to sit or vote.

enactment of the statute 7 Geo. 2. c. 16. § 4, whereby no judge of the court of session, or justiciary, or baron of the court of exchequer, in *Scotland*, is capable of being elected, or of sitting or voting as a member of the house of commons (a).

Sheriffs and stewards-depute, and their substitutes, disqualified to be elected, or to sit or vote.

By the statute 21 Geo. 2. c. 19. § 11 (b), sheriffs-depute, and stewards-depute, of the several shires and stewartries, and their substitutes, are rendered incapable of being elected, or of sitting or voting as members of the house of commons.

(See ante, sect. 9.)

With respect to disqualification at the statute law, by reason of holding any new office:

(a) Before this act passed, there were instances of barons of the exchequer in *Scotland* sitting in parliament, viz. those of baron *Scrope* and baron *Miller*. See 1 Doug. 445, 446.

(b) The stat. 21 Geo. 2. c. 19. “An act for the more effectual trial and punishment of high treason, and misprision of high treason, in the Highlands of Scotland; and for abrogating the practice of taking down the evidence in writing in certain criminal prosecutions; and for making some further regulations relating to sheriffs-depute and stewards-depute,

“and their substitutes; and for other purposes therein mentioned.”

(§ 10. Makes regulations with respect to sheriffs-depute, stewards-depute, and substitutes to sheriffs-depute and stewards-depute.)

§ 11. “And be it further enacted, by the authority aforesaid, That no such sheriff-depute or steward-depute shall be capable of being elected, or of sitting or voting as a member of the house of commons.”

(See post, 278, n. (a), for a petition against the return of a member upon this ground.)



Some questions have arisen touching offices in *Scotland*, under the statute of 6 Ann. c. 7. § 25.

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The case of *Lanerkshire*, 1775, where a disqualification was contended for under this statute, against Mr. *Stuart*, by reason of his having the office of king's remembrancer, in the court of exchequer in *Scotland* (a), has been already mentioned, as having been decided upon the question of his sufficient resignation of the office. (See ante, page 213.)

Office of king's remembrancer in the court of exchequer in *Scotland*, *quære* whether it disqualifies?

In the case of *North Berwick, &c.* 1775, sir *Alexander Gilmour* complained of the return of Mr. *Maitland*, upon the ground (*inter alia*) that he was incapable of sitting as a member, by virtue of the stat. 6 Ann. c. 7. § 25, he having the office of clerk of the pipe, in the court of exchequer, in *Scotland*, which was alleged to have been created since the 25th October, 1705, and to be within the meaning of the statute (b).

2 Dong. 423. Clerk of the pipe in the court of exchequer in *Scotland* does not disqualify.

(a) The question of whether this office disqualifies, seems in principle to fall within that of the following case of *North Berwick, &c.*

(b) There existed a court of exchequer in *Scotland* as far back as any authentic history of that country goes. It appeared that by an establishment or account of the officers in the court in 1698 (the latest which was taken before the union), there were certain clerks, but that among them there was not any clerk of the pipe, and what clerks there were held their offices by virtue of commissions from the lord register. In the commission to one of them he was stiled deputy to the lord re-



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It was urged on the part of the petitioner, that this office was both within the letter and the spirit of the act, and that the office was created after the union, by the statute 6 Ann. c. 26. § 3. upon the new establishment of the exchequer in *Scotland*; that there was no analogy between this office, and that of any of the

gister, dictator of the rolls, and keeper of the property roll.

By the treaty of union, all the ordinary courts of justice in *Scotland* were left with their former constitutions and jurisdictions; but with regard to the exchequer, there was to be a court of exchequer in *Scotland* after the union, and the court of exchequer that then was, was to remain until a new court of exchequer should be settled.

By the stat. 6 Ann. c. 26. a new court of exchequer was accordingly settled, and there were to be therein certain offices, by § 3. "that is to say, "the office of queen's remembrancer, *the office of clerk of the pipe*, and such other offices then in being in the court of exchequer in *England*, or as were then in being in *Scotland*, relating to signatures, gifts, and tories, as the queen's majesty, &c. should think fit," &c.

By § 21. the two principal clerks in the exchequer in *Scotland*, and other officers in

that court who had grants of their offices during life, or of inheritance, were to enjoy their offices according to the nature of their gifts, except in so far as they were inconsistent with the constitution of the exchequer, as the same was settled by that act: in which case, any such person was to be provided in one or other of the offices established by that act equal in value to what he then enjoyed, to hold for life, or in fee, or to have some other equivalent recompence for the loss of such office.

At the time of the union, Mr. *Mackenzie* was one of the clerks of the exchequer. When the new establishment made by 6 Anne, c. 26, took place, a new commission was granted by *the crown* to Mr. *Mackenzie*, appointing him *clerk of the pipe*, jointly with another person, in which commission he was stiled *recordator magni rotuli, sive clericus pipæ*. In the subsequent commission the word "*ingrossator*" was substituted for "*recordator*."

The clerk of the pipe has no functions relative to the



clerks upon the former establishment, and as a proof of this, the circumstance of a new commission having been granted to one of the former clerks, to enable him to execute this office, was adduced, that not having been the case in the instance of another office (that of presenter of signatures), which had continued under the new establishment (*a*).

The committee, however, were of opinion, that Mr. *Maitland* was eligible, notwithstanding that he was in possession of this office at the time of his election.

In the case of *Fife*, 9th December, 1779, and 7th February, 1780, the election and return of major-general *Skene* was objected to, upon the ground that he held the office of baggage-master of the forces, and inspector of the roads, in *Scotland*, which, it was alleged, disqualified him, by virtue of the statute 6 Ann. c. 7. § 25.

37 Journ. 500.  
560, 561.  
Office of baggage-master of the forces, and inspector of the roads in Scotland, disqualifies.

On the other hand, it was contended, that

duty of the court of exchequer as a court of English law; the accounts which pass through his hands are those relating to the excise, customs, seizures, land tax, and salt tax. These accounts are first enrolled by each of the remembrancers, and then by the clerk of the pipe. There

are not in the office of the latter any records prior to the union. The property roll is now kept by the king's remembrancer. See 2 Doug. 423, *et seq.*

(*a*) For the arguments on the part of the sitting member, see 2 Doug. 434.



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the statute did not attach, because they were *military* offices, and *not new*.

1 Lud. 455.

But the committee decided against the election of general *Skene*, the novel creation (*a*) of one of the offices being notorious (*b*).

Append. cxvi.  
Papists, and  
persons sus-  
pected of  
popery, re-  
quired and re-  
fusing to swear  
and subscribe  
the *formula*,  
disqualified.

It is only further to be observed, that the act of union declares, that none shall be capable to be elected but protestants, excluding all papists or such who being suspected of popery, and required, refuse to swear and subscribe the *for-*

(*a*) *Quære*, whether if a new office under the crown be strictly military, will it disqualify? See 6 Ann. c. 7. § 27. *ante*, 177.

(*b*) With respect to disqualification by reason of bankruptcy:

Mr. *Wight*, 166, mentions the following Scots act, whereby it appears that in *Scotland* there was a disqualification by reason of a protection from diligence, but in his index he *quarries* this disqualification.

The Scots act of Will. 3. 1 parl. 7 sess. 1698. c. 22. "*Act against personal protections.*"

"Our sovereign lord the king's majesty, with advice and consent of the estates of parliament, statutes and ordains, That no protection to be granted hereafter shall take effect to hinder any

"creditor from using personal  
"diligence against the debtor,  
"where the creditor was not  
"cited upon fifteen days, to  
"give in objections why the  
"protection should not pass;  
"and where creditors are  
"cited to the granting of pro-  
"tections, that their names  
"and designations be par-  
"ticularly set down in the  
"protection. It is like-  
"wise statute and ordain-  
"ed, That all protections to  
"be granted in parliament,  
"shall bear to be granted by  
"the king, with advice and  
"consent of the estates of  
"parliament, otherwise to be  
"void and null, but prejudice  
"to the lords of his majesty's  
"council, session, and ex-  
"chequer, and the commis-  
"sioners of justiciary, to grant  
"protections conform to the  
"power reserved to them  
"by the act of parliament,  
"1681, against personal pro-



*mula* contained in the third act made in the eighth and ninth sessions of king William's parliament, intituled, "An act for preventing the growth of popery (a)."

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SECTION 15. *Ireland.*

WITH respect to the matters relating to *Ireland* connected with the present subject, recurrence must be had to the rules of law stated in the preceding chapter; namely, that all the disabilities, both for the parliaments of *Great Britain* and of *Ireland*, previous to the union, by virtue of the statute 41 Geo. 3. c. 52. § 1 and 2, enure for the parliament of the united kingdom, in respect of places in that part of

"*tections*†, and in the terms thereof allenary. Likewise his majesty, with advice and consent aforesaid, statutes and ordains, That hereafter no person during the currency of, and till he renounce the benefit of his protection, shall be capable to choose, or be chosen, a member of parliament."

(a) See this *formula* in the App. cxvi. (n. \*) See also *ante*, chap. iii. as to the oaths

required to be taken by members on taking their seats. It should seem that a candidate who is present may be required to swear and subscribe the *formula* at the election; where he is not present, and it is intended to call upon him so to do, it might be proper (no precise course being pointed out) to give notice, as in the case of questioning a petitioner's qualification. See *ante*, 50.

† The act alluded to is one restrictive of the practice of granting protections.



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the united kingdom, wherein such disability previously attached; and further that, by the effect of § 3, of the same act, persons disabled by the acts of the parliament of either *Great Britain* or *Ireland*, are disqualified to be elected for places in both.

There are many statutes of the parliament of *Ireland* (a), which it will be material to notice; and also some statutes which have passed since the union, relative to, or so connected with *Ireland*, as to make this the proper place for introducing them (b); in doing which, the subject will be pursued in the same order in which it has been taken in the preceding sections.

(See ante,  
sect. 3.)

With respect to disqualification by reason of minority:

App. cclxxxvi.  
Persons under  
21 years of age  
disqualified.

The *Irish* statute 35 Geo. 3. c. 29. § 81, enacted, that no person thereafter should be capable of being elected, who was not of the age of one-and-twenty years; and that if any such

(a) As to the evidence of the *Irish* statutes, see Appendix, cci. n. (a).

(b) It will sometimes happen, in the course of this work, that, from the nature of a particular subject, it is very doubtful whether the matter would most properly belong

to the sections upon *Scotland* or *Ireland*, or to those parts of a chapter which are general; for which reason it will be better, upon investigating any subject, to refer to the corresponding matter of the same chapter, for *England*, *Scotland*, and *Ireland*.



minor thereafter chosen, should presume to sit or vote in parliament, he should incur such penalties and forfeitures as if he had presumed so to do, without being chosen or returned.

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Penalty on such persons presuming to sit or vote.

The *Irish* statute 37 Geo. 3. c. 47. § 20, enacted, that the election of every such person should be deemed null and void, and that if it should be determined by any committee, who should try any petition against any such election or return, that such person was under the age of twenty-one years on the day of such election, a new writ should forthwith issue for the election of another person in his place (a).

App. cxcviii.  
The election of minors void.

On determination of committee that the person chosen was a minor at the time of the election, new writ to issue.

With respect to disqualification by reason of bribery or treating: (See *ante*, sect 6.)

The law relating to elections in *Ireland*, corresponds with that which has been already stated as applicable to *England*. (See *ante*, sect. 6.)

(a) The effect of the terms of this clause is somewhat doubtful with respect to the case of a person who was a minor at the time of the election, subsequently avoided, but becomes of age before the second election; the objection to his capacity is then removed; the question would be, whether the statute directing the election of another person in his place, would have the effect of disqualifying him upon that vacancy. *Quære* how far this provision may be considered as superseded by the union?



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App. ccxlix.

(See ante, 131 to 133.)

Treating, or giving cockades, &c. in order to be elected, or for being elected, forbidden; and persons offending disqualified.

The enactments of the *Irish* statute 35 Geo. 3. c. 29. § 19, are nearly similar to those of the statute 7 Will. 3. c. 4, before mentioned, forbidding the same acts to be done, in order to be elected, or for being elected; with the addition of a prohibition to give cockades, ribbands, or any other mark of distinction for the same purpose; and persons offending are in like manner disabled and incapacitated.

(See ante, 135.)

The stat. 49 Geo. 3. c. 118. applies to elections in *Ireland*.

With respect to disqualification at the statute law, by reason of holding certain offices:

It is proper, in the first place, to notice how the law stands with respect to vacating a seat by acceptance of offices of profit in *Ireland*.

App. ccxxxii.

(See ante, 176, 177.)

The provisions of the *Irish* statute, 33 Geo. 3. c. 41. § 4, 5, and 8, substantially corresponded with the provisions of 6 Ann. c. 7. § 26 and 28, with a similar exception in favour of officers of the army and navy; and in the latter clause of the *Irish* act, there was also an exception in favour of officers of the militia, and of persons having offices for life, or during good behaviour.

App. cccxxxvi.  
Members accepting offices of profit imme.

And upon the union with *Ireland*, the statute 41 Geo. 3. c. 52, by § 9, provided that if any



member of the house should accept of any office of profit, immediately and directly from the crown, or by the nomination or appointment, or by any appointment subject to the approbation of the lord lieutenant, lord deputy, lord justices, or other chief governor of *Ireland*, his seat should be vacated; but such person (unless incapacitated) is capable of being re-elected.

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diately from the crown, or by appointment subject to the approbation of the lord lieutenant, to vacate their seats, but capable to be re-elected.

By way of exception to this provision:—By the 47 Geo. 3. Sess. 2. c. 20. § 3. the appointment of the chancellor of the exchequer of *Ireland*, to be a lord of the treasury in *England*, without salary, is not to make void his election.

App. ccclxxxvi. Appointment of chancellor of exchequer in Ireland as lord of the treasury in England, without salary, not to vacate his seat. (See post, 251.)

Neither, by the 49 Geo. 3. c. 120. § 34, does the accepting a commission in the militia of *Ireland* vacate a seat in parliament.

App. ccclxxxix. Commission in Irish militia not to vacate.

And by the 54 Geo. 3. c. 16. § 1. reciting the 41 Geo. 3. c. 52. § 9. and that persons being members of the house of commons, and holding, or having holden, offices of profit by the nomination or appointment, or by appointment subject to the approbation of the lord lieutenant, lord deputy, lord justices, or other chief governor of *Ireland*, may have remained or continued in, or may remain or continue in, or may have been, or may be nominated or re-appointed by the successor or successors of the lord lieutenant, &c. by whom they were appointed or approved, to hold or to continue to hold

App. ccxcvii. The continuing in offices of profit, or re-appointment by successors to lords lieutenant, &c. appointing, &c. not to vacate.

\*



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App. cccc.  
To what persons act to extend.

such offices, and the possibility of doubts whether the seat of such persons shall thereupon become vacant or not, declares that it shall not; the operation of the act being confined by § 2, to persons continuing and remaining in office at the decease, removal, or absence of the lord lieutenant, &c. nominating, appointing, or approving, or re-appointing or continuing them.

As to the offices in, or connected (a) with *Ireland*, which do or do not disqualify, by virtue of the several statutes (b):

Commissioners of the revenue in Ireland, and their deputies or clerks, disqualified to be elected, or to sit and vote.

By the *English* stat. 15 Geo. 2. c. 22. § 1(c), the commissioners of the revenue in *Ireland*, and their deputies or clerks, are incapable of being elected, or of sitting or voting in the house of commons.

App. ccxxx.  
Architect appointed by lord lieutenant to superintend public works disqualified from sitting or voting.

By the *Irish* stat. 33 Geo. 3. c. 34. § 21 (d), the architect appointed by the lord lieutenant to superintend the execution of all public works, under the direction of the commissioners of the board of works, is declared to be incapable of sitting and voting in parliament,

(a) See new writs ordered in the *English* house of commons, 22d Nov. 1606, in the room of sir *Humphrey Winch*, appointed lord chief baron of *Ireland*, upon the authority of the case of sir *James Lee*, upon his advancement to the chief-justiceship of *Ireland*. — Also in the room of sir *Oliver St. John*, master of the ordnance in *Ireland*. 1 Journ. 323.

(b) Possibly also many of

the offices, which disqualify by particular statutes, might have come within the operation of the general rules about to be stated, of the *Irish* stat. 33 Geo. 3. c. 41. § 1, or of that of the united kingdom, 41 Geo. 3. c. 52. § 5. *post*, 247. 250.

(c) For this stat, see *ante*, 178, 179.

(d) See note upon this statute, *post*, 247.



By the *Irish* statute 33 G. 3. c. 41. § 1. (a), no surveyor-general in the revenue, nor any collector in the revenue, appointed by the commissioners of the customs or excise, except the collectors of the customs and excise, in the port of *Dublin*, and in the county of, and city of *Dublin*;

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App. ccxxxi. Surveyors general in the revenue, collectors appointed by commissioners of customs and excise, except the collectors of customs and excise in the port, county, and city of *Dublin*; secretaries, to the commissioners of customs, to the excise, to commissioners of accounts, to commissioners of barracks, to the post-office, or ordnance;

Nor any of the secretaries,

To the commissioners of customs;

To the excise;

To the commissioners of accounts;

To the commissioners of the barracks;

To the post-office;

Or to the board of ordnance;

Nor the paymaster of bounties on corn coming coastwise to the city of *Dublin*;

the paymaster of bounties on corn, &c.

is capable of being elected, or of sitting or voting as a member of the house of commons.

disqualified to be elected and to sit or vote.

And, by § 9, if any person by that act disabled, or declared incapable of sitting or voting in the house of commons, should nevertheless be returned as a member, his election and return were to be void; and any such person presuming to sit or vote as a member, incurred a

App. ccxxxiii. Election of persons disqualified under act, void;

penalty on such persons presuming to sit or vote.

(a) See a note upon this statute, *post*, 247.



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*App. cclxxxvii.*  
No member of the house of commons to hold the office of a barrister assistant to the court of quarter sessions during the time that he is a member.

penalty of £500, to any person suing for the same, in manner therein directed (a).

By the *Irish* statute 36 Geo. 3. c. 25. (b), empowering the appointment of barristers as assistants to the justices at the different sessions of the peace (except those for *Dublin*), it was provided, by § 3, that no member of the house of commons should, during the time of his being such member, be capable of holding the office of such assistant barrister.

*Quære* whether such person disqualified to be elected? (See *ante*, 166. 173. 188.)

It should seem, however, that, according to some analogous cases before adverted to, a person having such office would not be disqualified to be elected, although he could not continue in such office, and also in the house of commons.

*App. cccv.*  
Provision upon the union with Ireland with respect to persons having offices under the crown, sitting in parliament.

Upon the union with *Ireland*, it was agreed by the fourth article of such union, as ratified by the statute 39 & 40 Geo. 3. c. 67. § 1. art. 4, that until an act should have passed in the parliament of the united kingdom, providing in what cases persons holding offices or places of profit under the crown in *Ireland*, should be incapable of being members, the number of such persons

Number of such persons, how at first limited.

(a) Although the disqualifications by the above statute seem to be in force by virtue of the stat. 41 Geo. 3. c. 52, yet it would be very questionable, whether this statute can be considered to be in force for the purposes of penalties, the 41 Geo. 3. being silent

thereupon, and the union having superseded the *Irish* house of commons, in respect of which the penalties applied.

(b) See the note upon the *Irish* stat. 33 Geo. 3. c. 41, and apply it to the above statute, *post*, 247.



who should be capable of sitting in the house of commons of the united kingdom, should be limited to twenty; and if a greater number should be returned, either the seats or offices of such as had last accepted their offices, should be vacated at their option, so as to reduce the number of members holding such offices to twenty; and no person holding any such office or place, was to be capable of being elected, or of sitting in the house, while there should be twenty such persons sitting in the house.

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The stat. 41 Geo. 3. c. 52, after reciting, in § 1, the act of union, and the expediency of fully declaring in what cases persons are and shall be disabled from, or incapable of, sitting and voting in the house of commons of the united kingdom, and enacting, by § 2 and 3, as has been before stated; by § 4, recites the above provision of the act of union, and enacts, that no person, by himself, or his deputy, or any other in trust for him, or for his benefit, taking, holding, enjoying, or executing, or continuing to hold or execute, any of the offices, employments, or places of profit, thereafter mentioned, in, or for *Ireland*, shall be capable of being elected, or of sitting or voting as a member of the house of commons.

(*Ante*, 100. 235, 236.)  
Offices or places in or for *Ireland* disqualifying the persons having by themselves, or by trust, &c. to be elected, or to sit;

The offices mentioned are those of,

Commissioner, of customs;

viz. commis-  
sioners of cus-  
toms,



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excise,  
stamps,

the being concerned in farming, collecting, or managing duties, &c. granted, or to be granted, to the crown by any act of parliament, (except commissioners of treasury, and their secretary);

commissioners of appeals concerning the duties of customs, excise, and stamps, and auditors of the said duties, (except the auditor of the exchequer);

commissioners of imprest accounts, army agents,

deputies or clerks,

in the treasury,

(except the secretary);

in the offices of the auditor,

teller,

or chancellor, of the exchequer, (except his secretary);

Of excise;

Of stamps;

Of persons concerned, directly or indirectly, in the farming, collecting, or managing, any of the sums of money, duties, or other aids theretofore granted, or which should thereafter be granted by any act of parliament to the crown, (except the commissioners of the treasury and their secretary);

Of commissioner for determining appeals concerning the said duties of customs, excise, or stamps, or for controuling or auditing the account of the said duties (except the auditor-general of the exchequer);

Of commissioner of imprest accounts;

Of agent for a regiment;

Of deputies or clerks,

In the office of lord high treasurer, or the commissioners of the treasury (except the secretary of the treasury);

In the office of the auditor of the receipt of the exchequer;

In the office of the teller of the exchequer;

In the office of the chancellor of the exchequer (except the secretary of the chancellor of the exchequer);



In the office of the commissioners of stamps.

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In the office of the commissioners of appeals.

of the commissioners of stamps, or of appeals.

By § 6, of the act, the election and return of persons thereby declared to be disabled from or rendered incapable of sitting or voting in the house of commons, is declared void; and every such person presuming to sit or vote as a member, is made liable to the pains, penalties, and forfeitures, inflicted or imposed by the several acts of parliament theretofore passed in *Great Britain or Ireland*, for disabling or incapacitating persons from sitting in the respective parliaments.—And if the disability or incapacity be, by the having, holding, or accepting, any office, employment, or place of profit, in that act enumerated and particularized, then and in such case, such person so sitting or voting is liable to a penalty of £500, for every day in which he shall so sit or vote, to be recovered as therein directed.

App. cccxxxiv. Election of persons under act disabled, void.

Penalty on such persons presuming to sit or vote.

Additional penalty where disability by office particularized in act.

The general operation of the act, is in some degree restricted by § 8, which contains a proviso that it is not to extend to persons appointed to offices for life, or during good behaviour; but the commissioners of imprest accounts, and all persons concerned in the managing, collecting,

App. cccxxxvi. Act not to extend to persons having office for life, or during good behaviour, except commissioners of imprest accounts, and persons



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concerned in  
managing du-  
ties granted to  
the crown.

or farming, the duties granted, or to be granted to the crown, are at the same time enacted to be within it.

App. ccclxxxvii.  
Divisional jus-  
tices of police  
in *Dublin* di-  
strict; receiver,  
and persons  
having office in  
or under such  
police esta-  
blishment, dis-  
qualified.

The stat. 48 Geo. 3. c. 140, which, by § 4, 5, 6, authorizes the appointment of 18 divisional justices of the police, within the district of *Dublin* metropolis, and a receiver of the public offices there, enacts, by § 14, that such justices and receiver, and all other persons holding any office in, or under the said police establishment, shall be incapable of being chosen members of, or of sitting in the house of commons during such time as they shall hold such offices. There are some other offices specifically declared to disqualify; but as the language of the legislature is, that of a declaration that they are *new*, they will be mentioned hereafter.

(See post. § 51.)

(See ante, 188.)

App. ccxv.  
Commissioners  
under Irish  
stat. 26 Geo. 3.  
c. 61. for im-  
provement of  
*Dublin*, to be  
appointed, not  
being mem-

Analogous to the restriction mentioned to have been introduced into the acts authorizing certain official appointments in *England*, is that of the *Irish* stat. 26 Geo. 3. c. 61. (a), which, in empowering the directors therein (for the improvement of the city of *Dublin*, &c.), with consent of the lord lieutenant, to remove the commissioners under that act, authorizes

(a) See note (a), p. 247, and apply the observation here.



the appointment of persons not being members of parliament to succeed to the vacancies.

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bers of parliament, in the room of persons removed.

Under which circumstances, it should seem, as before stated, that such persons when appointed, would not be disqualified to be elected, or to sit in parliament.

*Quære* whether such persons disqualified to be elected or to sit?

With respect to disqualification by reason of holding any *new* office: (See *ante*, sect. 9.)

Analogous to the before mentioned provision of the statute 6 Ann. c. 7. § 25, is that which (Ante, 175.) was enacted by the *Irish* statute 33 Geo. 3. c. 41. § 1. (a), by which no person having, in his own name, or in the name of any person or

App. ccxxxi. Persons having by themselves, or by trust, offices or places

(a) It at first appears somewhat questionable whether the *Irish* statute 33 Geo. 3. c. 41. is not virtually repealed by the act of union, and the 41 Geo. 3. c. 52; but upon a nearer consideration, it seems still to be in force.

profit under the crown in *Ireland*, should be incapable of being members of the parliament of the united kingdom, no greater number of members than twenty holding such offices or places should be capable of sitting.

Before the union, there were several offices which disqualified under various *Irish* statutes.

During the operation of that provision, twenty persons only having offices under the crown could sit, but there is no ground for arguing that persons who held disqualifying offices could compose any of that number; on the contrary, the quota for *Ireland* being furnished from among those who were already members of the *Irish* parliament, they

The act of union, by article 4, (App. ccv.) provided that, until an act should have passed in the parliament of the united kingdom, providing in what cases persons holding offices or places of



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of profit created since 16th August, 1793, disqualified from being elected, or sitting, or voting.

persons in trust for him, or for his benefit, any office or place of profit under the crown, created or erected at any time after the passing of that act (16th of August, 1793), is capable of being elected, or of sitting and voting as a member of the house of commons; that statute at the same time, by § 6, forbidding the appointment of any greater number of commissioners for the execution of any office, than had been employed in the execution thereof at some time before the first day of that parliament (a).

App. ccxxxii. Offices under the crown abolished, or disused for five years before 16th August,

By § 2. of the same act, any office under the crown, which had been abolished or disused for the space of five years before the passing of the act (16th of August, 1793), and which should

could not be disqualified, having adverted to the 33 Geo. 3. c. 41. *Irish* statute, in legislating as to new created offices, without saying any thing as to its repeal, affords the strongest inference for considering that act in force, and the more so as although possibly some one or two offices might be reached by either act, they generally apply to different offices.

The statute 41 Geo. 3. c. 52. by § 4. (App. cccxxxi) recites the above provision in the act of union, and then proceeds to enact, that certain persons should be disqualified. From the language of the act, it should seem, at first sight, that this would be a general declaration of the law as to disqualification by office in *Ireland*; but the same statute, by § 3. having confirmed all *Irish* statutory disqualifications, and by § 5.

(a) The writs were returnable 20th May, 1790, and the parliament was prorogued till 2d July following, when it met for business. 14 *Irish* Journ. 5. 9.



be re-established; or if any additional salary, exceeding one hundred pounds *per annum*, should, after the same period, be added to the salary of any office; or if a salary of one hundred pounds *per annum* should be granted to any office to which no salary was then granted, every such office is to be deemed a new office, within the intent and meaning of the act (*a*).

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1793, and re-established, or wherein upwards of 100*l.* *per annum* should, after the same time, be added to the salary, or wherein a salary of 100*l.* *per annum* should be granted, there having then been no salary, to be deemed new.

Exceptions. Commissioners of the treasury of Ireland not disqualified.

By § 3. of the same act, if the office of high treasurer of *Ireland* should be granted to commissioners (which, by § 7. his majesty was empowered to do), such commissioners are not disqualified.

It was provided by § 8. that the act should not extend, nor be construed so to do, to any member of the house of commons, being an officer of the army, militia, or navy, who should receive any, new or other commission, or warrant in the army or navy respectively.

App. ccxxxiii. Act not to extend to members of the house of commons being officers in the army, militia, or navy, and receiving any new or other commissions or warrants.

Neither, by the same clause, was it to extend to any person having or accepting an office for life, or during good behaviour (*b*).

Persons having offices for life, or during good behaviour, not disqualified.

(*a*) For penalty on persons disqualified under the act, presuming to vote, see *ante*, 241, and App. ccxxxiv.

3. 41. contained several provisions, calculated to give the fullest effect to that law, there was not only a clause (§ 6.) which corresponded with that

(*b*) The *Irish* act 33 Geo.



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App. ccxxxii.  
Persons hav-  
ing, by them-  
selves or by  
trust, offices in  
the appoint-  
ment of the  
lord lieutenant,  
&c. or by ap-  
pointment sub-  
ject to his ap-  
probation,  
created since  
1793, disquali-  
fied to be  
elected, or to  
sit or vote.

The provision of the stat. 33 Geo. 3. c. 41.

§ 1. applies only to *new* offices under the crown; a corresponding provision with respect to offices, whereof the appointment is either in the lord lieutenant, or subject to his approbation, was made by the stat. 41 Geo. 3. c. 52. § 5. whereby no person having in his own name, or in the name of any person or persons in trust for him, or his benefit, any office or place of profit, from or by the nomination or appointment, or by any appointment subject to the approbation of the lord lieutenant, lord deputy, lords justices, or other chief governor of *Ireland*, created or erected after the passing of the *Irish* act 33 Geo. 3. c. 41. (16th of August, 1793), is capable of being elected, or of sitting or voting as a member of the house of commons; and by § 6. the election of such person is altogether void,

in the 6 Ann. c. 7. § 27. (see *ante*, 177) whereby no additional commissioners were to be appointed; but by § 10. no person to be appointed to any civil office, or place of profit under the crown, the salary or perquisites of which amounted to £200 a year, to be thereafter created, was to be permitted to execute the duties, or to receive the salary or profits of such office, until he had taken the oath in the act that

he had not accepted it, and would not hold it, for the use or benefit of any member of the house of commons; and by § 11. every member, upon taking his seat, was required to take the oath therein, that he had neither a pension for years, nor during the pleasure of the crown, nor any office rendered by act of parliament incompatible with holding a seat in the house of commons. App. ccxxxiii. *et seq.*



and if he presume to sit or vote, he is liable to the penalty therein (a).

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The stat. 57 Geo. 3. c. 62. after (b) enacting by § 5, that the offices in *Ireland* of clerk of the council, muster-master-general, pratique master in the port of *Dublin*, and storekeeper of the customs, as they should become vacant, should be regulated; and by § 6, that the offices of commissioners of the board of works should be abolished, and officers appointed to execute the duty; by § 10. enacts that every office and appointment belonging to and making part of the establishment of any of the above offices when so regulated, is to be deemed a new office, within the 41 Geo. 3. c. 52.

*App. cccvi.*  
Offices expressly declared to be new.

As to exceptions:—The stat. 47 Geo. 3. sess. 2. c. 20. recites the 6 Ann. c. 7. § 27. and, notwithstanding the same, authorizes the appointment of the chancellor of the exchequer in *Ireland* to be a lord of the treasury in *England*. But by § 3. this is not to be deemed an appointment to a new office or place of profit under the crown; and the chancellor of the exchequer in *Ireland* is not thereby to be disabled from sitting or voting

*Append.*  
ccclxxxvi.  
(See *ante*, 177. 190.)  
Appointment of chancellor of exchequer of *Ireland* to be a lord of the treasury in *England*, without a salary, not an appointment to a new office so as to disqualify.

(a) See *ante*, 241, 242, n. (a), and *App.* cccxxxv.

(b) By § 4, the salary of the offices of the constables of the castles of *Limerick*, of *Dublin*, and of *Castlemain*, are to cease, and their allowances are restricted; but this does not seem to be a regula-

tion within the meaning of § 10. And by § 11. an alteration is made with respect to the office of keeper of the king's privy seal; but the provisions of the act with respect to other offices are not to extend to that office. *App.* cccvi, ccccx.



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as a member of the house of commons, nor rendered incapable to be elected.

(See *ante*, 239.)(See *ante*, sect. 11.)*App.* cccxxxi.

Persons having pensions from the crown during pleasure, or for a term of years, disqualified to be elected, or to sit or vote.

So, persons whose wives have such pensions.

With respect to disqualification by reason of holding a pension from the crown:—By the *Irish* stat. 33 Geo. 3. c. 41. § 1. no person having a pension from the crown during pleasure, or for a term of years, is capable of being elected, or of sitting or voting as a member of the house of commons (*a*). Neither, is any person capable, whose wife has any such pension.

(See *ante*, sect. 12.)*App.* cccxxxii.

Contractors for the public service in Ireland, and persons knowingly furnishing, in pursuance of such contract, money to be remitted abroad, or merchandize, disqualified to be elected, or to sit or vote during such contract.

With respect to disqualification by reason of holding contracts for the public service:—By the 41 Geo. 3. c. 52. § 4. A person himself, or by any person in trust for him, or for his use or benefit, or on his account, undertaking, executing, holding, or enjoying, in the whole or in part, any contract, agreement, or commission, made or entered into, under or from the commissioners of the treasury in *Ireland*, or with any of them, or with any other person or persons, for or on account of the public service in *Ireland*; or knowingly and willingly furnishing or providing, in pursuance of any such agreement, contract, or commission, so by him entered into, any money to be remitted abroad, or any wares or merchandize to be employed in the service of the public, is in like manner disqualified, during the time he shall execute, hold, or enjoy any such contract, agreement, or

(*a*) For the penalty, see *ante*, 241, 242, and *App.* cccxxxiv.



commission, or any part or share thereof, or any benefit or employment arising from the same (a).

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An exception is thereby made of members of incorporated trading companies, then (20th June, 1801) existing or established in *Ireland*, and consisting of more than ten persons, so far as relates to any contract, agreement, or commission made, entered into, or accepted by such company in its corporate capacity, for the general benefit of such incorporation or company.

Exception of members of incorporated trading companies in *Ireland*, existing 20 June, 1801.

With respect to disqualification by reason of bankruptcy: (See *ante*, sect. 13.)

The *Irish* statute of 19 & 20 Geo. 3. c. 25. reciting, that great inconveniencies may arise from members of the house of commons, against whom commissions of bankruptcy may issue, continuing to hold their seats in parliament, enacts, that in all cases where such commission shall issue, and shall not be superseded within six months from the time of issuing thereof, and the creditors proving their debts under the same, shall not be paid or satisfied to the full amount thereof within such six months; and with

Append. ccix. On commission of bankruptcy issuing against a member of the house of commons, and not superseded within six months, and creditors proving debts, not fully paid within six months, and debts if disputed, bankrupt not entering into security to pay sums to be recovered, with costs;

(a) For the penalty on disabled persons presuming to sit or vote, see *ante*, 241, and App. cccxxxiv.



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commissioners  
to certify the  
same to the  
speaker.

respect to debts (if any) which shall be disputed by the bankrupt or bankrupts, if he or they shall not enter into security, according to the directions of that act, to pay such sum or sums as shall be recovered or established in any proceeding in law or equity, concerning such debt or debts, together with such costs as shall be given in the same; that then the commissioners, or the major part of them, named in the commission, are required, immediately after the expiration of the six months after the issuing of the commission, to certify the same to the speaker of the house of commons; and thereupon the seat of such bankrupt or bankrupts shall be considered vacant, and the speaker shall issue a new writ for the same; and the act renders such bankrupt or bankrupts, or any person against whom a commission of bankruptcy shall issue, incapable, until the creditors shall be paid or satisfied the full amount of their debts claimed and proved under the commission (a).

Bankrupts disqualified until the creditors be paid the full amount of their debts proved under the commission.

(a) The oaths required to be taken by members for places in *Ireland* have been already stated to be the same as are taken by members for places in *England*, according to the 4th article of the act of union, (see *ante*, 38, and App. cccvi.) which superseded the enactment of the *Irish* statute 33 Geo. 3. c. 21. § 9. App. ccxxiii.



## CHAPTER VII.

## OF THE ELECTION OF INCAPACITATED PERSONS.

SECTION 1. *In what cases votes given to an incapacitated person are lost after notice to the electors.*

SECTION 2. *In what cases votes given to an incapacitated person are not lost after notice to the electors.*

SECTION 3. *How far the time of giving notice is material.*

SECTION 4. *Whether votes given to an incapacitated person are in any case lost, where no notice has been given to the electors.*

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THE foregoing matter leads to an inquiry, what are the legal consequences where a person, who is ineligible or disqualified according to the law before stated, becomes a candidate, and becoming so, obtains the majority of votes.

In such case, on account of the incapacity of the person chosen, the election, as far as regards him, must be abortive. But with regard to the electors who have misapplied their votes in making an illegal choice, it is material to consider what is the effect of such misapplication.



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If there be no other candidate than the person incapacitated, the election will necessarily be void; but if, besides such incapacitated person, there be also one or more candidates, it is a very important question, whether, in consequence of the incapacity of the former, the electors are to be called upon to reconsider their choice, or whether they are to be represented by the second in numbers upon the poll, he being in reality to be regarded as first, by reason of the nullity of the franchises given to the other candidates.

It will be seen that the latter proposition is that which constitutes the law in cases where the misapplication of the franchise by the electors is wilful, and therefore made in their own wrong, but that it is confined to such cases.

The criterion whereby to decide, whether the misapplication of the franchises by the electors has been wilful, is, by ascertaining whether or not the fact of ineligibility or disqualification in the candidate was sufficiently known to them. Upon this head, it will first be shewn how far notice(*a*) given of such fact is obligatory upon the electors, so as to preclude the plea of ignorance in them, and to annul the votes afterwards given by them to the incapacitated candidate; and it

(*a*) For a notice of disqualification, see *App.* xxiii.



will afterwards be considered, whether in any case the consequence can be the same, where no notice has been given.

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(For a notice of disqualification, see App. xxiii.)

That franchises so given, after such notice, are lost and thrown away, has been the general doctrine not only in parliamentary cases, but in cases of analogy in the courts of law.

Nor does there appear to be any exception to this rule, unless where notice of incapacity in the candidate has been made, under circumstances calculated to counteract that notice, and to impress the electors with an idea that there was no legal foundation for its purport.

The following decisions have occurred upon this subject:

In the case of *Malden*, 20th May, 1715, (which will presently be more fully adverted to), the candidate first upon the poll being disqualified by refusing to swear to his qualification, the next in point of numbers was seated.

18 Journ. 126 to 129.  
(See post, 278.)  
Candidate chosen refusing to swear to his qualification at the poll, next candidate seated.

In the case of *Cockermouth*, 18th January, 1717, sir *Wilfred Lawson*, who had the majority of votes, was proved at the election to be a minor, the bailiff returned him (a), and also

18 Journ. 673.  
A minor chosen, and the next candidate seated.

(a) See the form of the *Cockermouth* return, 1 Peck. 17.



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lord *Percy Seymour*, the candidate next upon the poll, stating the fact of sir *Wilfred Lawson's* minority in the return. The house seated lord *Percy Seymour*.

1 Doug. 419.  
(*Post*, 271.)

The case of *Abingdon*, 1775, which may seem in some degree of a contrary import, will be mentioned in its place.

1 Lud. 455.  
Candidate  
chosen dis-  
qualified by of-  
fice, and notice  
given at the  
poll, next can-  
didate seated.  
(See *ante*, 233.)

In the case of *Fife*, 1779, general *Skene* and Mr. *Henderson* were candidates. The former had the majority of votes, and was returned. The latter petitioned, and alleged that general *Skene*, the sitting member, was ineligible, by holding certain offices within the meaning of the stat. 6 Ann. c. 7. § 15.; that at the election the petitioner apprized the freeholders of general *Skene's* possession of these places, and of his consequent incapacity, and that they would throw away their votes if they elected him. General *Skene* admitted his holding the offices in question, but denied his disqualification thereby. The committee considered general *Skene* as disqualified, and, under the above circumstances, seated Mr. *Henderson*.

1 Lud. 72.  
38 Journ. 15.  
245. 415. 689.  
Clifford, 392.  
Candidate  
chosen disqua-  
lified by bribe-

In the case of *Kircudbright*, 1781 and 1782, Mr. *Johnston* having been returned, Mr. *Gordon* petitioned. The committee resolved, that a certain number of votes tendered for him



should be added to the poll, which gave him the majority; but they also resolved, that he, Mr. *Gordon*, was guilty of bribery at the last election for this stewartry. These resolutions were not reported to the house, it only appearing upon the Journals, that they determined that neither Mr. *Johnston* nor Mr. *Gordon* were duly elected, and that the election was void.

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ry, and notice given at the poll, next candidate seated. (See the resolutions stated in Mr. *Johnston's* petition, 24 April, 1781, 32 Journ. 415.)

Upon the second election, the same parties became candidates, and Mr. *Johnston* publicly read to the electors an attested copy of the resolution of the committee, that Mr. *Gordon* had been guilty of bribery as above stated, and at the same time informed them, that Mr. *Gordon* was thereby rendered ineligible for the said stewartry at any period of that parliament. Notwithstanding this, Mr. *Gordon* was elected and returned; and Mr. *Johnston* petitioned thereupon. The committee determined that Mr. *Gordon* was not duly elected; and Mr. *Johnston*, the petitioner, who was inferior to him upon the poll, was seated.

In the *Southwark* cases, 1796, Mr. *Thel-*  
*luson* had been chosen at the general elec-  
tion in May, but his election was petitioned  
against by Mr. *Tierney*, and was determined to  
be void by a committee of the house of com-  
mons; the committee, at the same time, making

Clifford, 1.  
(S.C. ante, 146.)  
Candidate  
chosen disqua-  
lified by treat-  
ing, and notice  
given at the  
poll, next can-  
didate seated.  
52 Journ. 125.



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Clifford, 81.

the following resolution: "That it appears to  
 " this committee, that at the last election for  
 " the borough of *Southwark*, *G. W. Thelluson*,  
 " esquire, did act in violation of the statute of the  
 " 7th of W. 3. c. 4. whereby he is incapacitated  
 " to serve in parliament upon such election."

Clifford, 222.  
261.

At the election which took place in consequence of the above determination, Mr. *Thelluson* and Mr. *Tierney* were again candidates; upon a poll being demanded, Mr. *Tierney* addressed the returning officer, and also the electors, stating that, by a resolution of the house of commons, Mr. *Thelluson* was declared ineligible. Mr. *Thelluson* was notwithstanding elected and returned. Mr. *Tierney* petitioned; and the committee, under the above circumstances, determined that Mr. *Thelluson* was not duly elected, and seated Mr. *Tierney*.

Clifford, 131.  
342, 343.

Clifford, 353.  
 (S. C. ante,  
 147.)  
 Candidate  
 chosen disqualified by bribery, and notice given, next candidate seated.

In the *Canterbury* cases, 1796 and 1797, Mr. *Baker* and Mr. *Sawbridge* were returned at the first election. Their return was petitioned against by several electors in the interest of sir *John Honeywood* and Mr. *Gipps*, the other candidates; the petition charging them with having been guilty of bribery, treating, and other corrupt and illegal practices, and that they had obtained thereby a majority of votes. The acts both of bribery and treating were



established against each of them; and the committee determined their election to be void.

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At the second election the same parties were candidates; Mr. *Baker* and Mr. *Sawbridge* were again elected; their return was again petitioned against, the petition setting forth the proceedings of the former committee, and that Mr. *Baker* and Mr. *Sawbridge* were ineligible, and claiming that sir *John Honeywood* and Mr. *Gipps* ought to have been returned. Clifford, 357.

It appeared that a written paper had been delivered to the returning officer, and by him read to the electors previous to the poll, signed by several freemen, protesting against the nomination of Mr. *Baker* and Mr. *Sawbridge*, as being ineligible to be re-elected, their former election having been declared void, by reason of divers acts of bribery, and corrupt practices.

Another protest, signed by sir *John Honeywood*, on behalf of himself, and Mr. *Gipps*, against the return of the sitting members, and claiming to be themselves returned, was also delivered to the returning officer, and read publicly by him to the electors, after the close of the poll, but before he had declared the return. Clifford, 360.



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Clifford, 361.  
363.  
52 Journ. 570.

The committee determined that Mr. *Baker* and Mr. *Sawbridge* were not duly elected, and seated sir *John Honeywood* and Mr. *Gipps*.

1 Peck. 526.  
Candidate  
chosen disqua-  
lified by mi-  
nority, and no-  
tice given at  
the poll, next  
candidate seat-  
ed.

In the *Flintshire* case, 1797, Sir *Thomas Mostyn* was elected and returned. Mr. *Lloyd* petitioned against the return of sir *Thomas Mostyn*, alleging him to be a minor, and that the same was repeatedly stated to the sheriff and the freeholders. Sir *Thomas Mostyn* did not defend the return, and Mr. *Lloyd* was seated.

The principle in question seems to have been admitted in various cases, where the petitioners respectively claimed the seats upon the same ground, but in which the sitting members having been holden to be eligible, there was no decision thereupon.

4 Doug. 87.  
Ib. 149.  
2 Lud. 269.  
1 Peck. 21.  
Ib. 494.

Of this description were the cases of *Southampton*, 1775; *Newport (Isle of Wight)*, 1785; *Dublin*, 1803; and *Radnorsshire*, 1803.

In unison with the above doctrine, is that which has prevailed in several cases, in the courts of law, touching elections within their jurisdiction.



Such have been the cases of, *The Queen v. Boscawen*, E. T. 13 Ann. B. R.; *The King v. Withers*, E. T. 8 Geo. 2. B. R.; *Taylor v. The Mayor and Aldermen of Bath*, M. T. 15 Geo. 3. B. R.; *The King v. Monday*, H. T. 17 Geo. 3. B. R.; *The King v. Coe*, H. T. 27 Geo. 3. B. R.; *The King v. Hawkins*, Tr. T. 48 Geo. 3. B. R.; *The King v. Parry and Phillips*, M. T. 52 Geo. 3. B. R.; and *The King v. Bridge*, Hil. T. 53 Geo. 3. B. R. which will be respectively noticed.

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Cit. Cowp.

537.

Ibid.

Ibid. and Clifford, 399.

Cowp. 537.

Heyw. Co. El. 538.

1 M. & S. 76;  
14 E. 549.

As to the two first of these cases, it is unnecessary to state more than what appears in the judgment which was delivered by the court of King's Bench, in that of *The King v. Hawkins*.

(See post, 268.)

*Taylor v. The Mayor and Aldermen of Bath*.—*Taylor* moved for a mandamus to be admitted into the office of a common councilman of the corporation of *Bath*. The defendants returned *non fuit electus*. The plaintiff traversed the return; and the cause being at issue, it appeared in evidence at the trial, that, by the charter, the election of common councilmen is by the mayor, recorder, aldermen, and common council, or the major part of them then present; and that the mayor, and twenty-seven of the corporation, being assembled for this purpose, *Taylor*, *Bigg*, and *Kingstone* were proposed as candidates. *Bigg*, who was nei-

Clifford, 399.

Upon an election for a corporate office, votes given for a disqualified person, after notice, holden to be thrown away, and the person having the next majority holden to be elected.



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ther an inhabitant nor freeman, as the charter requires, was objected against, as a disqualified person ; notwithstanding which, he had fourteen votes, *Taylor* had thirteen, and *Kingstone* only one. But *Bigg* not being a person qualified, *Lee*, chief justice, before whom this cause was tried, directed the jury, that if they were satisfied that the electors had notice of *Bigg's* want of qualification, they should find for the plaintiff ; because *Bigg*, not being qualified, was to be considered as a person not *in esse*, and the voting for him a mere nullity ; and that those who did vote for him were to be considered as virtually consenting to the election of *Taylor*. The jury found a verdict for the plaintiff.

A new trial was moved for, on the ground of a misdirection to the jury in point of law. It was contended, that the *majority* having voted for *Bigg*, though not qualified, *Taylor* could not be duly elected, the charter requiring that every person elected must be elected by the majority then present. That *Bigg* being elected in *fact*, his want of qualification could not give a right to *Taylor*, who had not the majority ; but made the election void *in toto*. For the election was an entire act, and could not be void as to him who had the majority ; and good for him who had not a majority.



But the other judges of the court of king's bench agreed with the lord chief justice, that the verdict was right. They held, that as the fourteen electors who voted for *Bigg* had notice that he was not qualified, their votes were thrown away. That when electors vote for a person not qualified, it is the same thing as if they had given no vote at all; in which case it was not disputed, but that silence was a constructive consent. The new trial was therefore denied.

In the case of *The King v. Monday*, Hil. T. Cowp. 530. 17 Geo. 3, which was a question as to the election of the defendant to the office of an alderman of the borough of *Portsmouth*, one part of the argument on the part of the defendant was directed to this point, upon the ground of the incapacity of the other persons elected, and notice thereof at the election. But as the election of the defendant could not be supported upon other grounds, no judgment was given upon that head.

*The King v. Coe*, Hil. T. 27 Geo. 3. B. R. Heyw. Co. El. 538. upon an application for an information in the nature of *quo warranto*, for holding the office of a common councilman of *Cambridge*, it appeared that *Beales* and *Coe* were proposed to



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the aldermen, who have the right of election, and that *Beales* had the majority; but that notice was given by one of the assembly, that he was incapacitated, because he had not received the sacrament within twelve months next before the time of election; and it was admitted, upon authority of the case of *Taylor* and the *Mayor of Bath*, that being thus incapacitated, the votes given to him were thrown away, and his opponent, who had the minority, duly elected, provided the election was in other respects duly conducted. Upon that, however, there was a doubt, and the rule for granting the information was made absolute.

10 East. Rep.

211.

S. C. *post*, 474,  
(where, see n.  
(a)).

The case of *The King v. Hawkins*, Trin. T. 48 Geo. 3, is one of considerable authority, the former decisions having been severally brought under the review of the court of king's bench, and noticed in their judgment.

Where a person chosen to a corporate office was disqualified, by not having taken the sacrament within a year, contrary to the 13 Car. 2. c. 1. § 12, and notice was given to the electors, the votes given for him after

The question arose upon the election of an alderman for the borough of *Saltash*. *Hawkins* and *Spicer* were candidates. After two voters had voted for *Spicer*, and two for *Hawkins*, *Hawkins* being asked whether he had taken the sacrament within a year, and answering that he had not, it was notified and declared that he was on that account ineligible and in-



capable to be elected an alderman; and that if any voter should, after that notification, give his vote for him, such vote would be thrown away, and void. The person making the objection then publicly read the 12th section of the stat. 13 Car. 2. c. 1, after which twenty voters voted for *Hawkins*, all of whom except two or three were present when the notification of the ineligibility of *Hawkins* was made, and heard the same, and sixteen voters voted for *Spicer*; whereupon *Hawkins* was sworn into office.

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such notice holden to be thrown away, and the next candidate holden to be elected, although some of the votes given for the disqualified candidate (though not equal in number to those ultimately given for the other) were given before the notice.

After hearing the case argued, the court adjudged *Hawkins* to be incapable (*a*); where-

(*a*) The stat. 13 Car. 2. sess. 2. c. 1. § 12. "Provided also, and be it enacted," &c. "That no person or persons shall for ever hereafter be placed, elected, or chosen, in or to any of the offices or places aforesaid," (i. e. *inter alia*, that of alderman), "that shall not have within one year next before such election, or choice, taken the sacrament of the Lord's supper, according to the rites of the church of *England*," (it then requires that certain oaths shall be taken, &c.); "and in default thereof, every such placing, election,

"and choice, is thereby enacted and declared to be void."

The question as to the capacity or incapacity of *Hawkins*, depended upon this clause, coupled with the effect of the indemnity act (47 Geo. 3. c. 5. § 1.\*), which it was contended on his part removed the objection. It was answered with respect to the latter act, that the office was, at the time of passing the act, legally filled up and enjoyed by *Spicer*, and therefore that *Hawkins* could not thereby be entitled to be placed in it.

\* This act is not set out in the printed statutes; but see 42 Geo. 3. c. 23, from which the indemnity acts are since copied.



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upon the validity of the election of *Spicer*, who had the minority of votes, became the point; upon which lord *Ellenborough*, C. J. in delivering the judgment of the court, says, "If the law be, that at the election of corporate officers, the votes given for an incapable candidate, after notice of such incapacity, are to be considered as thrown away, *i. e.* as if the voters had not given any vote at all, then this will be a good election of *Spicer*; unless the time when notice of his incapacity was given, namely, after two persons had given their votes for each of the candidates, can be considered as making any difference. The general proposition, that votes given for a candidate, after notice of his being ineligible, are to be considered the same as if the persons had not voted at all, is supported by the cases of *The Queen v. Boscarwen*, Easter, 13 Ann.; *The King v. Withers*, Easter, 8 Geo. 2.; *Taylor v. Mayor of Bath*, Mich. 15 Geo. 2.; all which are cited in Cowp. 537; in *The King v. Monday*. In the first, *Boscarwen*(a) and *Roberts*, the two candidates, had an equal number of votes; but because *Boscarwen* was incapable, the votes given for him were considered as thrown away, and the other duly elected. In the second case, *Withers*(b) had

(a) It does not appear in the case of *The Queen v. Boscarwen*, for what office the election was.

(b) In *The King v. Withers*, the question arose respecting a burgess-ship for the borough of *Westbury*.



five votes out of eleven; and the other six refusing to vote at all, the court held *Withers* duly elected; and that the six who refused to vote were virtually consenting to the election of *Withers*."

*Lord Ellenborough* then proceeded to notice the cases of *Taylor* and the *Mayor of Bath*, *The King v. Monday*, and *The King v. Coe*, and concluded thus: "Is there then any solid distinction between the cases I have alluded to, as establishing the general proposition, and the present case, on account of the notice of the disqualification of *Hawkins* having been given after two persons had voted? We think there is not: there still remained thirty-six persons to vote, of whom sixteen only voted for *Spicer*, and twenty for *Hawkins*: although we are not prepared to say, that if the notice had been given in a more advanced stage of the poll, it would have made any difference, provided the number of votes given for *Hawkins*, without notice of his incapacity, had not been equal to those given for *Spicer*."—*Spicer* was holden duly elected (a).

(Ante, 263.  
265.)

*The King v. Parry*, M. T. 52 Geo. 3. B. R. (b). 14 East. 549.

An information in the nature of *quo warranto*, was exhibited against the defendant calling upon him to shew by what authority he claimed to be a common councilman of the town and county

(a) There was an appeal against this decision to the House of Lords; but the judgment was affirmed. 2 Dow's Rep. 124. and *post*, 277 (n).

\*

(b) There was another case of *The King v. Phillips*, which arose upon the same facts, and was disposed of together with the above case.



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of the town of *Haverford West*. It appeared upon the pleadings that, at the election, there were several candidates; that the defendant had not within a year next before the election taken the sacrament of the Lord's Supper according to the rights of the church of *England*, of which full and distinct notice was, at the time of taking the poll, and as soon as two electors had polled for the defendant, and before any other had polled, given to the mayor who took the poll and presided at the election, and to the electors, in the presence and hearing of the defendant, (which he did not deny,) and that all votes given for him would be thrown away; that nevertheless the mayor continued to take the poll, and to take and reckon the votes offered for the defendant, who, at the close of the poll, was with another declared to have the greatest number of votes. The two highest upon the poll, of the unsuccessful candidates, claimed to have been duly elected, and insisted that they were entitled to have been sworn into the offices. The court considered the law laid down in the preceding cases, and particularly in that of *The King v. Hawkins*, as clearly established. But the case itself was decided upon another point (a).

(a) The defendant had taken the sacrament before the information was filed, and within the time mentioned in the annual indemnity act, (then the 50 Geo. 3. c. 4. § 1, and 6,) by which act he claimed to have been recapitulated, and to have had his title confirmed as effectually as if the disability had never existed; the office, at the time of the act passed, not having been "already



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Upon the authority of these cases, together with what is said by Lord *Mansfield* in that of *The King v. Blissell*, herein after stated, depends the rule. Exceptions however have been contended for, the consideration of which will be the subject of the following section.—It is scarcely necessary to add, that an election holden, notwithstanding a protest against its legality by a majority of the electors, such majority not proposing any other candidate, will be good (a).

1 Doug. Rep.  
K. B. 398, (n.)  
Heyw. Co. El.  
537.  
(*Post*, 279.)

SECTION 2. *In what cases votes given to an incapacitated person are not lost, after notice to the electors.*

SEVERAL exceptions have been urged, as taking cases out of the foregoing rule, that votes given to an incapacitated candidate, after notice, are thrown away and lost; and that the electors, in such case, are to be represented by the candidate next upon the poll.—Of these, however, only one has been distinctly admitted, namely, that, in the following case, where, although notice of the incapacity of one of the candidates was given to the electors, there was fair

“legally filled up and enjoyed by any other person.” The other parties in fact had not been sworn in, although it was alleged that the mayor had wrongfully refused to swear them in, and let them enjoy the offices. The court were of opinion that, as no other candidates were clothed with the possession and enjoyment

of the offices before the passing of the indemnity act, the defendants were entitled, and gave judgment for them. See *Harrison v. Evans*, Cowp. 393 (n).

(a) See *Oldknow v. Wainwright*, 2 Burr. 1017, where this principle was established in a case with regard to the election of a town clerk at *Nottingham*.



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ground to suppose that they were misled by the declaration and conduct of the returning officer.

1 Doug. 419. Where the candidate chosen was disqualified by being sheriff, and notice given, but the returning officer told the electors that he considered such candidate eligible, and himself voted for him, the election holden void, but the next candidate not seated.

*Abingdon, 1775.*—Mr. *Bayly* and Mr. *Mayor* were candidates, Mr. *Mayor* being then high sheriff of the county of *Berks*. At the place of election, and before the taking of the poll, the mayor, and the other electors, were publicly told, that Mr. *Mayor*, being high sheriff of the county, was incapable of being chosen for the borough; and that all votes given to him would be thrown away. The question of his eligibility was argued by counsel, at the place of election, before the poll began; and after their arguments, the returning officer told the electors, that, in his opinion, Mr. *Mayor*, although high sheriff, was capable of being chosen. In addition to which, the returning officer himself voted for him. He was accordingly elected and returned. The committee, upon petition, under the above circumstances, holding Mr. *Mayor* not to be duly elected, did not seat Mr. *Bayly*; but only determined the election to be void.—As the fact of notice was not disputed, the ground of decision must necessarily have been, that the conduct of the returning officer being such as to impress the electors with the idea that Mr. *Mayor* was eligible, was calculated to counteract the notice; the determination probably proceeding upon an equitable regard to the interests of the electors, who, it should seem, ought not to be deprived of their fran-



chise, unless they have acted with a full knowledge of the disqualification of the candidate.

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It is to be observed, however, that in the *Southwark* case, wherein Mr. *Tierney*, the second candidate, was seated, the returning officer said he would receive the votes tendered for either candidate; that he had consulted counsel on the question of Mr. *Thelluson's* eligibility, and that they were of opinion that he was eligible.

Clifford, 224. (and *ante*, 259.) Where the candidate was disqualified by bribery, and notice given, the next candidate was seated, notwithstanding that the returning officer held out to the electors that the disqualified candidate was eligible.

With respect to exceptions to the rule, other than that in the *Abingdon* case, it has been contended that it ought not to apply, where the disqualification of the candidate is not clear and manifest. Thus, in the case of the university of *Dublin*, where Mr. *Knor*, who was objected to as not belonging to the university, having only an honorary degree, had before been chosen to represent the same body, and had sat during a whole parliament in *Ireland*, without objection to his eligibility; it was said that it was reasonable for the electors to pay more attention to that fact than to the assertions of the other candidate; but Mr. *Knor* being holden eligible, this point was not decided.

1 Peck. 19. (S. C. *ante*, 103.) *Quære*, whether any distinction in the cases from the nature of the incapacity?

T



## Sect. 2.

1 Peck. 494.  
498.

1 Lud. 455.

Clifford, 1. 131.  
353. 357.  
(Ante, 146,  
147.)

In the *Radnorshire* case, where the alleged disqualification was by treating at the same election, it was urged, that the incapacity must be such as to be conclusive upon the sitting member at the time of the notice given, namely, such as was inherent in his character, or situation, as in the case of *Fife*, or had been already fixed upon him by formal proof and judicial determination, as in the cases of *Southwark* and *Canterbury*.

The decisions, however, do not afford any line of distinction hereupon, though, as far as it regards the electors, the question seems widely different in cases where the disqualification is obvious and notorious, as if an *English* peer, or a bishop, were to become a candidate, from those wherein the ground of disqualification is equivocal and uncertain, as where there are acts which may, or may not, amount to bribery or treating (*a*),

(*a*) It has been a question much agitated among persons conversant with election law, whether, if a disqualification of a candidate be contended for at the election, upon the ground of bribery or treating, the electors voting for such candidate should, in the event of his being adjudged to be disqualified upon that ground, be considered as having thrown away their votes. The objec-

tion to such doctrine is that above mentioned, namely, the uncertainty of the ground of disqualification. Although very plausible arguments may be urged on the other side, it should seem that the better reason would be, and that it would be most consonant with the policy and principles of the law upon bribery and treating, that such votes should be considered as thrown away,



or where a candidate has an office disqualifying or not, according to circumstances; as that of a commissioner of the woods and forests.

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(See *ante*, 186, 187.)

SECTION 3. *How far the time of giving notice is material.*

IT has been made a question whether the notice of incapacity ought not to be given before the commencement of the election; it is, however, now clear from what was decided in the case of *The King v. Hawkins*, as well as from the language of the court in those of *The King v. Parry*, and *The King v. Phillips*, that notice may be given at any time during the election, the effect of such notice being confined to the votes subsequently given. That it is so confined distinctly appears both from those cases, and from that which follows.

Notice of disqualification only affects votes given subsequently.

*Ante*, 266.*Ante*, 269.

*The King v. Bridge*, H. T. 53 Geo. 3. Upon a rule for an information in the nature of *quo warranto* against the defendant for exercising the office of mayor of the borough of *Colchester*; it appeared that on the day appointed by the charter, a meeting of the free burgesses was held, (for nominating two persons in the first instance, one of whom was afterwards to be elected,) provided the evidence pro-

1 M. and S. 76.

If disqualified candidate after deducting lost votes still have a majority, the second cannot be seated.

duced to the electors, at the time of the election, in support of such alleged disqualification, were satisfactory; that is, such as the committee, putting themselves in the situation of a jury, sitting upon a question of bribery

and treating, supported by such evidence, could fairly, and ought to act upon. If such facts shall have been demonstrated to the electors, upon their refusal to notice them, it surely can be no hardship to say their votes shall be lost.



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at which two persons of the names of *Smith* and *Sparling*, together with the defendant, being all three aldermen of the borough, were put in nomination by the free burgesses. The mayor having called for a shew of hands, declared the majority to be in favour of *Smith* and *Sparling*; whereupon a poll was demanded on the behalf of the defendant, and proceeded in. During the progress of the poll, and when the total number of free burgesses who had voted were as follows, viz. for *Smith* 99, for *Sparling* 91, and for the defendant 11, the defendant inquired of *Sparling* if he had taken the sacrament within a year; to which *Sparling* answered that he had not; whereupon the defendant gave notice to the free burgesses that *Sparling* was ineligible. A fresh nomination did not take place; but the remainder of the free burgesses were allowed to poll, at the close of which the total numbers were, for *Smith* 133, for *Sparling* 123, and for the defendant 22: but the mayor, considering *Sparling* as ineligible, returned *Smith* and the defendant to the residue of the aldermen, who afterwards elected the defendant to the office of mayor. The court (a) were clearly of opinion that as the notice given of the ineligibility of *Sparling* had not been until after 91 persons had voted for him, the mayor was not at liberty to treat those votes as thrown away; and to return the defendant, who was in a minority. Therefore, where there is notice after the commence-

(a) The counsel who was the point, finding the court to have shewn cause against were against him. And the the rule, declined arguing rule was made absolute.



ment of the poll, the question will be whether, after striking off the votes subsequently given (a), the disqualified candidate has or has not a majority; if he have, although his election will be void, nevertheless the next in numbers will not be entitled to the seat.

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SECTION 4. *Whether votes given to an incapacitated person are in any case lost, where no notice has been given to the electors.*

IN most of the cases herein before mentioned, as supporting the doctrine that votes given for an incapacitated person, after notice, are thrown away and lost, the actual notice has been shewn: it remains to consider whether the notoriety, that a candidate is ineligible or disqualified, can in any

(a) The Lord Chancellor upon the appeal against the decision of the court of King's Bench, in *The King v. Hawkins*, in giving his judgment said, "If the majority were unpolled at the time of the notice given, the utmost that those who had polled without notice could say, would be, 'Place us in the same situation in which we would have been if notice had been given at the beginning of the election;' and that was only matter for consideration, if they could not proceed on the theory, that all continued present till the election was over. The notice was given, and why did the election continue under these circumstances? and why did not those who were surprised perhaps, require to vote again? unless it was the duty of others to call on them to

do so, they ought to have done it; and if they did not, they sanctioned all that was done; and their complaint came too late, when they might have required to vote again, and have made the election effectual by voting, or ineffectual if their votes had been refused.

"But no other man would have been chosen here. The majority knowingly voted for this dead man, and that was to be attended to. If he were to go farther he should take the ground that the majority was unpolled at the time of the notice; and if he were to go farther, he should say it was his opinion that when a voter had polled without notice, it rested on him to require to be permitted to vote again." 2 Dow's Rep. 147.



## Sect. 3.

Principle of  
notice that  
candidate is  
incapable.

18 Journ. 126  
to 129.  
(*Ante*, 257.)

case supersede the necessity of notice, so as to affect the electors with the same consequences. The object of notice is, to bring the law and fact of the incapacity of the candidate immediately within the knowledge of the electors, and thereby to make them aware of the misapplication of their votes; after which, if they persist in such misapplication, they do it of their own wrong, and the consequent loss of their franchise is their own voluntary act.—It seems in principle not to be distinguishable, whether, the disqualification be within the knowledge of the electors, from their own observation, or, from actual notice given to them, and that their votes would be alike thrown away in both cases.—In support of this proposition (*a*), there is the case of *Malden*, 20th May, 1715, where the qualification of Serjeant *Comyn*, the candidate chosen, was openly demanded at the election, and he refused to swear to it. The committee resolved his election to be void, “he having  
“ wilfully refused to take the oath of qualifica-  
“ tion, as is directed by an act of parliament of  
“ the 9th year of the late queen,” &c. (9 Ann. c. 5.) “ though duly required so to do, and not  
“ having, at any time before the meeting of this

(*a*) See the case of *Richmond*, 16 Jan. 1661. 8 Journ. 341. 346. *ante*, 73.

*Aberbrothock*, 6th Dec. 1748. Mr. *Scott* petitioned against the election of Mr. *Maitland*, stating, that being the sheriff-depute of the shire of *Edinburgh*, he was incapacitated (see *ante*, 230); and claiming that he Mr. *S.* ought to have been returned, “ as

the said *C. M.* was by law incapable of being elected, as his incapacity was objected, and was notorious to all the electors, and in particular well known to the said *C. M.* himself.” The case came on to be heard the 2d Feb. following; but was withdrawn before the hearing was concluded. 25 Journ. 667. 710.



“parliament, taken the said oath.” And the house agreed.

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It does not appear that, in that case, there was any distinct notice given to the electors, that the candidate was ineligible in consequence of his refusal to take the oath of qualification, and yet the committee resolved, and the house agreed (171 to 106), that Mr. *Tuffnell*, who had the next majority upon the poll, was duly elected. Neither does it appear that, in the case of *Cockermouth*, 18th January, 1717 (*a*), there was any notice. In each of these cases the incapacity was probably notorious; in the former, the qualification is stated to have been openly demanded; and in the latter, as the incapacity was stated in the return, it is probable it was known to the electors.

(*Ante*, 257.)  
18 Journ. 673.

In the case of the *King v. Blissell*, 19 Geo. 3. K. B. lord *Mansfield* contemplates the proposition in question, and his language (although in

1 Doug. Rep.  
K. B. 398. (n.)  
Heyw. Co. El.  
537.

(*a*) The decision of the house in the *Middlesex* case, 1769, whereby Mr. *Wilkes*, the candidate returned, having been expelled the house that session, and his election twice avoided, upon the ground of incapacity, arising from such expulsion, Mr. *Luttrell*, who had the minority of votes, was seated, must have gone upon the notoriety of his disqualification; as it does not appear that any notice was given at the poll, (*ante*, 123.) However, the subsequent proceedings of the house in that case render any doctrine to be collected therefrom of little weight, (*ante*, 125.)



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that case there was notice) supports the notion, that the notoriety of incapacity would be tantamount to notice.

The subject there in dispute was, whether *Blissell* had been duly elected an alderman of *Portsmouth*. He and one *Pike* were put in nomination; *Pike* was chamberlain of the corporation; the mayor objected to him as ineligible on that account; three aldermen, however, voted for him; the mayor then gave notice to the aldermen that their votes were thrown away, and declared *Blissell* duly elected, though he alone voted for him: *Pike* was holden not to be disqualified; but lord *Mansfield*, addressing the counsel who was arguing that the disqualification was not notorious, said, “Do you doubt  
“that if he is really disqualified, whether such  
“disqualification is notorious or not, that the  
“votes given for him are thrown away? *In*  
“another judicature, if the disqualification is  
“notorious, it does more; it elects the other  
“party (a).”

(a) How far the returning officer is bound to act upon votes given for a disqualified candidate, see *post*, chap.



## PART II.

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### CHAPTER I.

#### OF UNDUE INTERFERENCE AT ELECTIONS.

SECTION 1. *Of the freedom of elections.*

SECTION 2. *Of the interference of peers.*

SECTION 3. *Of the interference of persons holding certain offices.*

SECTION 4. *Of the removal of the military from the place of election.*

SECTION 5. *Of the interruption of the proceedings at elections by riots.*

SECTION 6. *Scotland.*

SECTION 7. *Ireland.*

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**W**E shall now treat of the proceedings at the elections, which will be detailed in chronological order, from the issuing of the writ in the first instance, until the making the return, when the election is completed.



## Sect. 1.

But before we enter hereupon, it is necessary to point out those provisions, by which the free enjoyment of the elective franchise is protected and secured to the electors, as essential to the very existence of parliament.

Elections  
ought to be  
free.

(For the stat. 3  
Edw. 1. c. 5.  
see post, 302.)

The stat. 1 W. & M. sess. 2. c. 2. § 1. (a), after reciting, as one of the grounds of the abdication of *James*, the “violating the freedom of election of members to serve in parliament,” declares, “that election of members of parliament ought to be free,” this being one of the undoubted rights and liberties therein claimed and recognized.

The freedom of election, thus solemnly confirmed, and which was, in truth, a first and established principle, the law will not suffer to be endangered either by seduction and persuasion, or by awe and intimidation.

Therefore it is, that neither practices of bribery and corruption, nor the interposition of illegal influence, nor the presence of a military force during an election, nor the interruption of the proceedings by riot and disturbance, can in any degree be endured by the constitution.

(a) The act “declaring the “subject, and settling the suc-  
“rights and liberties of the “cession of the crown.”



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The practices herein first mentioned as sub-  
versive of the freedom of elections, are treated  
of elsewhere in this work; the other prohibi-  
tions of the law, in respect of the freedom of  
elections, will be examined in the following  
sections.

(See *ante*, chap.  
6. sect. 6. and  
*post*, vol. ii.)

## SECTION 2. *Of the interference of peers.*

THE successful efforts of the commons, in  
establishing the security of their independence  
against any undue influence on the part of the  
crown, have been already noticed; it is now to  
be seen that their vigilance had not been less,  
in prohibiting the interference of the other  
branch of the legislature.

(See *ante*, chap.  
6. sect. 8, 9.)

The law of parliament strictly forbids that  
peers should in any way interfere at elections  
for members of the house of commons.

On the 10th December, 1641 (*a*), information <sup>2 Journ. 337.</sup>  
being given to the house of commons, that letters

(*a*) The entry in the jour-  
nal is this: "Whereas the  
house of commons has received  
information that letters from



## Sect. 2.

were sent from peers to boroughs, “to make elections of members;” they expressed their disapprobation thereof, as tending to the violation of the privileges of parliament, and the freedom of elections of members of the house of commons; and declared, that, notwithstanding such letters, all persons to whom such elections belonged ought to proceed with that freedom which, by the laws of the realm and of right, they ought to do; and that they expected that if any such letters should thereafter be sent, the parties receiving them should certify their contents to the house, or bring the letters themselves to the speaker. An order was thereupon made to this effect, and the members of the house

peers are directed to boroughs, that now are to make elections of members to serve in this parliament: they conceive, that all letters of that nature, from any peers of this realm, do necessarily tend to the violation of the privileges of parliament, and the freedom of elections of the members that ought to serve in the house of commons: and do declare, that, notwithstanding such letters, all persons, to whom elections of knights and burgesses do belong, ought to proceed to their elections with that freedom, which by the laws of the realm, and

of right, they ought to do; and do expect, that if any such letters, from any peers of the realm, shall hereafter be sent unto them, that the parties receiving the same shall certify the contents thereof, or bring the letters themselves to the speaker of the house of commons.”

“Resolved, upon the question, that it shall be thus ordered: And that the knights, citizens, burgesses, and barons of the cinque ports, shall send copies of this order to the several counties, cities, boroughs, and cinque ports respectively.”



were ordered to send copies to their respective constituents.

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Upon the 15th February, 1700, the house, <sup>13 Journ. 333.</sup> upon a petition being presented, complaining of the interference of a peer at the election for *Huntingdon*, made an order against such interference (a), (or that of lords lieutenants of counties), which was afterwards repeated at the commencement of every session as a standing order.

Upon the union with *Ireland*, the propriety of making some alteration in the terms of this order was considered; and, after a committee appointed to report (according to an order of the 30th October, 1801), had made their report, <sup>57 Journ. 54.</sup> (17th November), the following resolution was <sup>Ib. 34.</sup> adopted, (27th April, 1802), and has since con- <sup>Ib. 376.</sup> tinued to be the standing order hereupon:

Resolved, "That it is a high infringement of the liberties and privileges of the commons of the united kingdom, for any lord of parliament, or other peer or prelate, not being a peer of

Peers not to concern themselves in elections.

(a) Resolved, *nem. con.* members to serve for the commons in parliament, is a high infringement of the liberties and privileges of the commons of England."



## Sect. 2.

Exception of peers of Ireland, at elections in Great Britain, where they appear as candidates, or are proposed such. Lords lieutenants, and governors of counties, not to concern themselves in elections.

*Ireland* at the time elected, and not having declined to serve for any county, city, or borough, of *Great Britain*, to concern himself in the election of members to serve for the commons in parliament, except only any peer of *Ireland*, at such elections in *Great Britain* respectively, where such peer shall appear as a candidate, or by himself, or any others, be proposed to be elected; or for any lord lieutenant, or governor of any county, to avail himself of any authority derived from his commission, to influence the election of any members to serve for the commons in parliament (a)."

(*Ante*, 284.)

Since the period in the reign of *Charles* the first, when the commons made the order first above mentioned, there have been several complaints to the house of the interference of peers.

12 Journ. 353, 354.

13 Journ. 512.  
(See *ante*, 285.)

The petitions in the cases of *Lestwythiel*, of the 12th December, 1698, and of the 5th May, 1701, as well as that before mentioned of *Huntingdon*, contained allegations to that effect. In these, however, it does not appear that any thing was done material to the present consideration.

(a) For the resolution against peers voting at elections, see *post*, vol. ii.



In the case of *Malmsbury*, 29th January, 1701, upon the question touching the proceedings in respect of the election, the earl of *Peterborough* having been mentioned in the evidence given at the bar in relation thereto, he desired to be heard (*a*).

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13 Journ. 711,  
712.

When he had been heard, it was resolved, "That it appeared to the house, that he was guilty of many indirect practices, in endeavouring to procure *Daniel Park*, esquire, to be elected a burgess to serve in that present parliament for the borough of *Malmsbury*," &c.

Resolution  
against a peer,  
for interfering  
in an election.

In the case of *Carlisle*, 14th May, 1710, the bishop of *Carlisle* having been mentioned in the evidence touching the election, he desired to be heard.

16 Journ. 548.

After he had been heard, it was resolved, "That it appeared to the house that he had dispersed several copies of a letter, pretended to have been received from sir *James Montague* (a member of the house), in order to procure him to be elected a citizen in the city of *Carlisle*, reflecting on the honour of her majesty; and by concerning himself in the said election, had highly infringed the liberties and privileges of the commons of *Great Britain*."

Resolution  
against a peer  
for interfering  
in an election.

(*a*) It does not distinctly appear what the nature of the interference of lord *Peterborough* was in endeavouring to procure the election.



## Sect. 2.

25 Journ. 429.

25 Journ. 449.

3 Doug. 239.

The petitions in the cases of *Seaford*, 20th November, 1747 (*a*), and of *Tregony*, 26th November, 1747 (*b*), contained allegations of peers having concerned themselves in the elections, as did that in the case of *Worcester*, 1776 (*c*); but in the former of these the petition was dismissed, and in neither of the latter does this point seem to have been insisted upon.

(*a*) The petition of the right honourable *Charles Sackville*, commonly called earl of *Middlesex*, and of Mr. *Gage*, complained in substance, that a peer of the realm, on the day before the election, invited most of the voters to his house, and entertained them there, and they being so assembled, solicited and influenced them in respect of giving their votes at the election; and that he afterwards, in order to awe and influence the electors, came into court at the election, accompanied by other peers, and being seated near the returning officer, continued there until the poll was closed, notwithstanding that the presence of such peers was objected to by one of the petitioners, and the returning officer was applied to by him not to take the poll while they remained.

The then standing order of the house against the interference of peers having been read, a motion was made, that the

matter of the petition should be heard at the bar of the house.

This motion was negatived, 247 to 96; and it was ordered that the petition should be dismissed.

(*b*) The petition of Mr. *Kirril* stated, amongst other allegations, "that a noble lord and peer of parliament did concern himself with, and endeavour unduly to influence the choice of representatives of the said borough, by soliciting votes in person in behalf of the sitting members, publicly going about from house to house for that purpose, in manifest violation of the rights and privileges of the commons of *Great Britain*."

A motion, that the matter of the petition should be heard at the bar of the house, was negatived, and it was ordered to be referred to a committee; but there is no further entry touching the case.

(*c*) In the above case of *Worcester*, when it was pro-



SECTION 3. *Of the interference of persons holding certain offices.*

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IT is declared by the before mentioned order of the house, to be an high infringement of the liberties and privileges of the commons, for any lord lieutenant (a) to avail himself of any authority derived from his commission, to influence the election of any members to serve for the commons in parliament (b).

(See ante, 286.)  
Lords lieutenants of counties not to avail themselves of any authority derived from their commissions to influence elections.

posed on the part of the petitioner to go into evidence concerning the interference of a peer, complained of in the petition, the counsel on the other side objected to it, as being only a matter of privilege, which was not essential to the merits of the election; that such an inquiry might have been made by the ancient committees of elections, which were also committees of privileges; but that now there is a distinct committee of privileges appointed annually, before whom such a complaint ought to be carried. The committee thought that they were bound to entertain the evidence, being sworn to try the matter of the petition. 3 Doug. 255.

(a) See the proceedings as to the alleged interference of the Duke of Chandos in the election for the county of Southampton, 10th and 17th Dec. 1779, and 2d February, 1780. 37 Journ. 507. 513. 557.

See the proceedings as to the alleged interference of Lord Douglas in the Lanarkshire election, wherein the charge with respect to him was reported to be perfectly false and groundless, and wherein one Thomas Ferguson appearing to have made an unfounded statement with respect to Lord Douglas's interference, was ordered into custody. 10th and 24th April, and 20th May, 1818. 73 Journ.

Weymouth and Melcombe Regis, 1812. The writ was delivered to the Duke of Cumberland; but though this was reported to the house, and a motion was made thereupon, no further notice was taken of it. Male, 65. 68 Journ.

(b) Mr. serjeant Heywood mentions that lords lieutenants in some counties formerly assumed the right to nominate one member for every borough within their districts. Co. El. 55. (n).



## Sect. 3.

nor ministers  
under the  
crown.

App. Dcxvii.

In the same spirit it has been resolved to be highly criminal, for any minister or servant under the crown to use the powers of office for the like purpose.

It seems that the lord wardens of the cinque ports used formerly to claim, as of right, a power of nominating and recommending to each of the cinque ports, the two ancient towns, and their respective members, one person to be elected for each of such places; but the stat. 2 W. & M. sess. 1. c. 7 (a), after reciting by § 1. that they had so pretended and claimed, contrary to the ancient right, usage, and freedom of elections, declares by § 2. all such nominations or recommendations to be contrary to the laws and

Lord warden  
of the cinque  
ports not to  
recommend  
members for  
the cinque  
ports, &c.

(a) The stat. 2 W. & M. sess. 1. c. 7. "*An act to declare the right and freedom of election of members to serve in parliament for the cinque ports.*" [A.D. 1690.]

"Whereas the election of members to serve in parliament ought to be free; and whereas the late lord wardens of the cinque ports have pretended unto, and claimed, as of right, a power of nominating and recommending to each of the said cinque ports, the two ancient towns, and their respective members, one person whom they ought to elect to serve as a baron or member of parliament for such respective port, ancient town, or member, contrary to the ancient

"usage, right, and freedom of elections:"

§ 2. "Be it therefore declared and enacted, by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That all such nominations or recommendations were and are contrary to the laws and constitutions of this realm, and for the future shall be so deemed and construed, and hereby are declared to have been, and are, void to all intents and purposes whatsoever; any pretence to the contrary notwithstanding."



constitution of this realm, and to be void to all intents and purposes.

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Upon the same principle upon which it has been seen, that persons holding certain offices are disqualified from being themselves in parliament, persons in the several offices hereinafter mentioned are forbidden to interfere in elections, and heavy penalties are imposed upon such persons if they presume so to interfere.

By the stat. 5 W. & M. c. 20. § 48. (a), no collector, supervisor, gauger, or other officer or

Officers or persons employed in charging, collecting, le-

(a) The stat. 5 W. & M. c. 20. "*An act for granting to their majesties several rates and duties upon tonnage of ships and vessels, and upon beer, ale, and other liquors, for securing certain recompences and advantages in the said act mentioned, to such persons as shall voluntarily advance the sum of fifteen hundred thousand pounds towards the carrying on the war against France.*"

§ 48. "And to the end the great duties of excise, and the powers given for the collecting and levying the same, may not be employed for the influencing of elections of members to serve in parliament, which elec-

tions, by the constitution of this government, ought to be free and uncorrupt; Be it enacted, by the authority aforesaid, That from and after the first day of May, in the year of our Lord 1694, no collector, supervisor, gauger, or other officer, or person whatsoever, concerned or employed in the charging, collecting, levying, or managing, the duties of excise, or any branch or part thereof, shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to be a knight of the shire, citi-



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vying, or managing the duties of excise, not to interfere in elections.

Penalty of 100*l.* on such persons offending, and disability from office.

person whatsoever, concerned or employed in the charging, collecting, levying, or managing the duties of excise, or any branch or any part thereof, shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to serve in parliament; and every officer, or other person offending therein, is made liable to a penalty of £100, and disabled and incapacitated from bearing or executing any office relating to the duty of excise, or any other office or place of trust under the crown.

Commissioners and officers of the customs

The stat. 12 & 13 Will. 3. c. 10. §91. (a), in like manner prohibits the interference of com-

“zen, burgess, or baron of  
“any county, city, borough,  
“or cinque port, to serve in  
“parliament; and every offi-  
“cer, or other person offend-  
“ing therein, shall forfeit the  
“sum of one hundred pounds,  
“one moiety thereof to the  
“informers, the other moiety  
“to the poor of the parish  
“where such offence shall be  
“committed, to be recovered  
“by any person that shall  
“sue for the same, by action  
“of debt, bill, plaint, or in-  
“formation, in any of their  
“majesties’ courts of record  
“at Westminster, in which no  
“essoins, protection, privilege,

“or wager of law, or more  
“than one imparlance, shall  
“be allowed; and every per-  
“son convict on any such  
“suit, of the said offence,  
“shall thereby become dis-  
“abled and incapable of ever  
“bearing or executing any of-  
“fice or place, concerning or  
“relating to the duty of ex-  
“cise, or any other office or  
“place of trust whatsoever  
“under their majesties, their  
“heirs or successors.”

(For more of this statute, see ante, 168.)

(a) The stat. 12 & 13 Will. 3. c. 10. “An act for granting an aid to his majesty for



missioners, collectors, comptrollers, searchers, or other officers or persons concerned or employed in the charging, collecting, levying, or managing, the customs, or any branch or part thereof, under a similar penalty, together with the same incapacity.

Sect. 3.

not to interfere  
in elections.Penalty on  
such persons  
offending.

The stat. 9 Ann. c. 10. § 44. (a), in terms precisely

Postmaster,  
or postmasters.

“ *defraying the expence of his  
“ navy, guards, and garrisons,  
“ for one year, and for other  
“ necessary occasions, two shil-  
“ lings in the pound.*”

§ 91. “ And be it further  
“ enacted, by the authority  
“ aforesaid, That from and  
“ after the nine-and-twentieth  
“ day of September, one thou-  
“ sand seven hundred and  
“ one, no commissioner, col-  
“ lector, comptroller, search-  
“ er, or other officer or person  
“ whatsoever, concerned or  
“ employed in the charging,  
“ collecting, levying, or ma-  
“ naging, the customs, or any  
“ branch or part thereof,  
“ shall, by word, message, or  
“ writing, or in any other  
“ manner whatsoever, endea-  
“ vour to persuade any elector  
“ to give, or dissuade any elec-  
“ tor from giving, his vote for  
“ the choice of any person to  
“ be a knight of the shire, ci-  
“ tizen, burgess, or baron of  
“ any county, city, borough,  
“ or cinque port, to serve in  
“ parliament; and every of-  
“ ficer, or other person of-

“ fending therein, shall forfeit  
“ the sum of one hundred  
“ pounds; one moiety there-  
“ of to the informer, the other  
“ moiety to the poor of the  
“ parish where such offence  
“ shall be committed, to be  
“ recovered by any person  
“ that shall sue for the same,  
“ by action of debt, bill,  
“ plaint, or information, in  
“ any of his majesty's courts  
“ of record at *Westminster*, in  
“ which no essoin, protection,  
“ or wager of law, or more  
“ than one imparlance, shall  
“ be allowed; and every per-  
“ son convict on any such  
“ suit, of the said offence, shall  
“ thereby become disabled,  
“ and incapable of ever bear-  
“ ing or executing any office  
“ or place, concerning or re-  
“ lating to the customs, or  
“ any other office, or place of  
“ trust whatsoever under his  
“ majesty, his heirs or suc-  
“ cessors.”

(For more of this statute,  
see ante, 172.)

(a) The stat. 9 Ann. c. 10.  
“ *An act for establishing a ge-  
“ neral post-office for all her*



## Sect. 3.

general, their deputies, and persons employed in receiving, collecting, or managing the revenue of the post-office, not to interfere in elections.

## Penalty.

the same, prohibits the interference of any postmaster, or postmaster-general, or of his or their deputy, or deputies, or of any person employed by, or under him or them, in the receiving, collecting, or managing, the revenue of the post-office, or any part thereof.

The penalty, and consequent incapacity, up-

*“majesty's dominions, and for settling a weekly sum out of the revenues thereof, for the service of the war, and other her majesty's occasions.”*

(§ 1. Repeals the stat. 12 Car. 2. c. 35, and the Scots act *“Anent the post-office,”* of the 5th sess. of the first parliament of Will. 3.)

(§ 2. Establishes the general post-office.)

§ 44. “And be it further enacted, by the authority aforesaid, That no postmaster, or postmaster-general, or his or their deputy or deputies, or any person employed by or under him or them, in the receiving, collecting, or managing the revenue of the post-office, or any part thereof, shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to be a knight of the shire, citizen, burgess, or baron of

any county, city, borough, or cinque port, to serve in parliament; and every officer, or other person offending therein, shall forfeit the sum of one hundred pounds; one moiety thereof to the informer, the other moiety to the poor of the parish where such offence shall be committed, to be recovered by action of debt, bill, plaint, or information, in any of her majesty's courts of record at *Westminster*, or in the court of exchequer in *Scotland*, for the said offences committed in *England* and *Scotland* respectively, wherein no esoin, protection, or wager of law, or any more than one imparlance, shall be allowed; and every person convict on any such suit of the said offence, shall thereby become disabled, and incapable of ever bearing or executing any office, or place of trust whatsoever under her majesty, her heirs or successors.”



on conviction of such offence, are the same as those mentioned with respect to officers of the excise and customs.

So, by the stat. 9 Ann. c. 11. § 49(a), commissioners, officers, or other persons concerned or employed in charging, collecting, receiving, or managing, the duties granted by that act, are

Commissioners, officers, and persons concerned in charging, collecting, or managing the du-

(a) The stat. 9 Ann. c. 11.  
*"An act for laying certain  
 duties upon hides and skins,  
 tanned, tawed, or dressed,  
 and upon vellum and parch-  
 ment, for the term of thirty-  
 two years, for prosecuting  
 the war, and other her ma-  
 jesty's most necessary occa-  
 sions."*

§ 49. "And be it further  
 enacted, by the authority  
 aforesaid, That no commis-  
 sioner, officer, or other per-  
 son, concerned or employed  
 in the charging, collecting,  
 receiving, or managing, any  
 of the duties granted by this  
 act, shall, by word, mes-  
 sage, or writing, or in any  
 other manner, endeavour  
 to persuade any elector to  
 give, or dissuade any elector  
 from giving, his vote for the  
 choice of any person to be  
 a knight of the shire, com-  
 missioner, citizen, burgess,  
 or baron, for any county,  
 city, borough, or cinque

port; and every officer, or  
 other person offending there-  
 in, shall forfeit the sum of  
 one hundred pounds, one  
 moiety thereof to the in-  
 former, the other moiety  
 thereof to the use of the  
 poor of the parish or place  
 where such offence shall be  
 committed, to be recovered  
 by any person that shall sue  
 for the same by action of  
 debt, bill, plaint, or infor-  
 mation, in any of her ma-  
 jesty's courts of record at  
*Westminster*, or in the court  
 of exchequer in that part of  
*Great Britain* called *Scot-*  
*land*, in which no essoin,  
 protection, privilege, or wa-  
 ger of law, or more than one  
 imparlance, shall be allow-  
 ed; and every person convict  
 on any such suit, shall there-  
 by become disabled, and in-  
 capable of ever bearing or  
 executing any office or  
 place of trust whatsoever  
 under her majesty, her heirs  
 or successors."



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ties granted  
by stat. 9 Ann.  
c. 11, not to  
interfere in  
elections.

in like manner prohibited from interfering at elections, under the same penalty, and with the same disability, as in the other cases just mentioned.

Commission-  
ers, officers,  
and persons  
concerned in

The stat. 10 Ann. c. 19. (a), by § 182, has the same prohibition, with respect to commis-

(a) The stat. 10 Ann. c. 19. *“ the capital of the South Sea  
“ An act for laying several  
“ Company) for the use of the  
“ duties upon all soap and pa-  
“ public.”*  
“ per made in Great Britain,  
“ or imported into the same,  
“ and upon chequered and  
“ striped linens imported, and  
“ upon certain silks, calicoes,  
“ linens, and stuffs, printed,  
“ painted, or stained, and upon  
“ several kinds of stamped vel-  
“ lum, parchment, and paper,  
“ and upon certain printed pa-  
“ pers, pamphlets, and adver-  
“ tisements, for raising the  
“ sum of eighteen hundred  
“ thousand pounds, by way of  
“ lottery, towards her majesty's  
“ supply, and for licensing an  
“ additional number of hackney  
“ chairs, and for charging cer-  
“ tain stocks of cards and dice,  
“ and for better securing her  
“ majesty's duties to arise in  
“ the office for the stamp du-  
“ ties, by licences for mar-  
“ riages and otherwise, and for  
“ relief of persons who have  
“ not claimed their lottery  
“ tickets in due time, or have  
“ lost exchequer bills or lottery  
“ tickets, and for borrowing  
“ money upon stock (part of  
“ § 182. “ And be it further  
“ enacted, by the authority  
“ aforesaid, That no commis-  
“ sioner, officer, or other per-  
“ son concerned or employed  
“ in the charging, collecting,  
“ receiving, or managing, any  
“ of the duties granted by this  
“ act, shall, by word, message,  
“ or writing, or in any other  
“ manner, endeavour to per-  
“ suade any elector to give, or  
“ dissuade any elector from  
“ giving, his vote for his  
“ choice of any person to be  
“ a knight of the shire, com-  
“ missioner, citizen, burgess,  
“ or baron, for any county;  
“ city, borough, or cinque  
“ port, and every officer, or  
“ other person offending there-  
“ in, shall forfeit the sum of one  
“ hundred pounds, one moiety  
“ thereof to the informer, the  
“ other moiety thereof to the  
“ use of the poor of the pa-  
“ rish or place where such of-  
“ fence shall be committed, to  
“ be recovered by any person



sioners, officers, or other persons concerned or employed in the charging, collecting, receiving, or managing, the duties granted by that act, under the same penalty and disability.

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charging, collecting, or managing duties granted by 10 Ann. c. 19, not to interfere in elections.

The stat. 39 & 40 Geo. 3. c. 87. § 24. (a), adopts all the restrictions and penalties im-

“ that shall sue for the same,  
 “ by action of debt, bill,  
 “ plaint, or information, in  
 “ any of her majesty’s courts  
 “ of record at *Westminster*, or  
 “ in the court of exchequer  
 “ in that part of *Great Bri-*  
 “ *tain* called *Scotland*, in  
 “ which no essoin, protection,  
 “ privilege, or wager of law,  
 “ or more than one impar-  
 “ lance, shall be allowed;  
 “ and every person convict on  
 “ any such suit shall thereby  
 “ become disabled, and in-  
 “ capable of ever bearing or  
 “ executing any office or  
 “ place of trust whatsoever,  
 “ under her majesty, her heirs  
 “ and successors.”

(a) The stat. 39 & 40 Geo.  
 3. c. 87. “ *An act for the*  
 “ *more effectual prevention of*  
 “ *depredations on the river*  
 “ *Thames, and in its vicinity;*  
 “ *and to amend an act made in*  
 “ *the second year of the reign*  
 “ *of his present majesty, to*  
 “ *prevent the committing of*  
 “ *thefts and frauds by persons*  
 “ *navigating bum boats, and*  
 “ *other boats upon the river*  
 “ *Thames.*”

(§ 1. Authorizes his majes-  
 ty to cause a public office to  
 be established at or near  
*Wapping New Stairs*, and ap-  
 point three special justices for  
 determining complaints of of-  
 fences committed on the river  
*Thames*.)

§ 24. “ And be it further  
 “ enacted, That all the clauses  
 “ and provisos mentioned  
 “ and contained in the said  
 “ act of the thirty-second year  
 “ of his present majesty’s  
 “ reign, touching and con-  
 “ cerning the prohibition re-  
 “ lative to the taking of fees  
 “ to the use of individuals, the  
 “ incapacity of the justices  
 “ with regard to their sitting  
 “ in parliament, and the re-  
 “ strictions and penalties im-  
 “ posed on the justices, re-  
 “ ceiver, and constables, with  
 “ regard to their interfering  
 “ in parliamentary elections;  
 “ and also all the clauses and  
 “ provisos mentioned and  
 “ contained in the said act of  
 “ the second year of the reign  
 “ of his present majesty, re-  
 “ specting the searching and



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posed upon the justices, receiver, and constables, under the statute 32 Geo. 3. c. 53, and applies them to persons holding similar situations at the *Thames* police office.

Justices, receiver, and constables, at the Thames

The restrictions and penalties alluded to, as depending upon the stat. 32 Geo. 3. c. 53. (a),

“detaining of boats on the  
“said river, or the seizing and  
“detaining of goods suspect-  
“ed to be stolen, and the per-  
“sons suspected to be guilty  
“of stealing the same, and  
“the mode of proceeding with  
“respect thereto, and respect-  
“ing the discovery, appre-  
“hension, and punishment of  
“offenders, and respecting the  
“obstructing the execution  
“of the said act, and respect-  
“ing the commencing or pro-  
“secuting of actions against  
“justices or their officers,  
“shall be deemed, construed,  
“and taken to be, and the  
“same are hereby declared  
“to extend to, and to be  
“parts of this act, as if the  
“same were herein specially  
“repeated and re-enacted;  
“and that all justices to be  
“from time to time appoint-  
“ed, under and by virtue of  
“this act, and all constables  
“and surveyors to be from  
“time to time appointed by  
“the said justices, shall have  
“all such powers, privileges,  
“and protections, in all re-  
“spects whatsoever, in the

“execution of the said acts,  
“and of this act, as any jus-  
“tice, constable, or other of-  
“ficers or persons, could or  
“might by law have under  
“the said acts, or either of  
“them, except in as far as  
“the same are varied in and  
“by this present act.”

(a) [The stat. 32 Geo. 3. c. 53. “*An act for the more effectual administration of the office of a justice of the peace, in such parts of the counties of Middlesex and Surrey, as lie in and near the metropolis, and for the more effectual prevention of felonies.*”

§13. “Provided always, and be it enacted and declared, that no justices of the peace to be appointed as aforesaid, by virtue of this act, shall, during their continuance in such appointment, be capable of being elected, or of sitting as members of the house of commons.”

§ 14. “And be it further enacted, by the authority aforesaid, that no justice,



go to prohibit the persons before mentioned, during their continuance in office, and within six months afterwards, from interfering in elections for members for the counties of *Middlesex* and *Surrey*, for the city and liberty of *Westminster*, and for the borough of *Southwark*, under the penalty of £100, to be recovered as

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police office,  
not to interfere  
in elections.  
(And see ante,  
183.)

Penalty.

“ receiver, or constable, no-  
“ minated and appointed as  
“ aforesaid, by virtue of this  
“ act, shall, during the time  
“ he or they shall continue  
“ in their respective offices,  
“ or within six months af-  
“ ter he or they shall have  
“ quitted the same, be capa-  
“ ble of giving his vote for  
“ the election of a member  
“ to serve in parliament for  
“ the counties of *Middlesex*  
“ or *Surrey*, or for the city  
“ and liberty of *Westminster*,  
“ or the borough of *South-*  
“ *wark* respectively, nor  
“ shall, by word, message,  
“ writing, or in any other  
“ manner, endeavour to per-  
“ suade any elector to give,  
“ or to dissuade any elector  
“ from giving, his vote for  
“ his choice of any person to  
“ be a member to serve in  
“ parliament for the said  
“ counties, or for the said city  
“ and liberty of *Westminster*,  
“ or borough of *Southwark*;  
“ and every such justice, re-  
“ ceiver, or constable, as  
“ aforesaid, offending there-  
“ in, shall forfeit the sum of  
“ one hundred pounds; one  
“ moiety thereof to the in-  
“ former, the other moiety  
“ thereof to the use of the

“ poor of the parish or place  
“ where such offence shall  
“ be committed, to be re-  
“ covered by any person that  
“ shall sue for the same by  
“ action of debt, bill, plaint,  
“ or information, in any of  
“ his majesty's courts of re-  
“ cord at *Westminster*, in  
“ which no essoin, protec-  
“ tion, privilege, wager of  
“ law, or more than one im-  
“ parlance, shall be allowed;  
“ such action to be brought  
“ within the space of one year  
“ after such offence so com-  
“ mitted: Provided never-  
“ theless, that nothing in  
“ this act shall extend, or be  
“ construed to extend, to  
“ subject any such justice,  
“ receiver, or constable, as  
“ aforesaid, to any penalty  
“ or penalties, for any act or  
“ acts done by him or them,  
“ at or concerning any of the  
“ said elections, in the dis-  
“ charge of his or their duty  
“ or duties in their said re-  
“ spective capacities.”]

This statute is repealed by  
the stat. 42 Geo. 3. c. 76,  
but the above clause is, by  
the stat. 39 & 40 Geo. 3. c.  
87. § 24, to be taken to be  
part of that act.



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Penalty not to attach in respect of acts done in discharge of duty.

directed by the act:—This prohibition is at the same time qualified with a proviso, protecting such persons from penalties, in respect of acts at, or concerning such elections, done in discharge of their duty.

*Ante*, 183.

The stat. 39 and 40 Geo. 3. c. 84, had expired as before mentioned, but has in effect been revived by the 54 Geo. 3. c. 187 (*a*). And, at all events, persons belonging to the *Thames* police office would, by § 36 of the latter act, be brought within the same restrictions as those belonging to the other offices.

Justices, receivers, and constables, at the seven pub-

The stat. 54 Geo. 3. c. 37. § 15. (*b*), has an enactment precisely similar, with respect to the

(*a*) The stat. 54 Geo. 3. c. 187. “*An act to revive and continue until the first day of June, one thousand eight hundred and twenty, and to amend several acts for the more effectual prevention of depredations on the river Thames and its vicinity.*”

[30th July, 1814.]

(§ 36, *inter alia*,) adopts all clauses and provisos mentioned and contained in the 54 Geo. 3. c. 37. touching the incapacity of the justices with regard to their sitting in parliament, and the restrictions and penalties imposed on the justices, receivers, and constables, with regard to their interfering in parliamentary elections. The continuance of the act is by § 38.

(*b*) (For the title and provisions of § 1, 2, 3, and 14, see *ante*, 183, 184.)

§ 15. “And be it further enacted, that no justice, receiver, or constable, nominated and appointed as aforesaid, by virtue of this act, shall, during the time he or they shall continue in their respective offices, or within six months after he or they shall have quitted the same, be capable of giving his vote for the election of a member to serve in parliament for the counties of *Middlesex* or *Surrey*, or for the city and liberty of *Westminster*, or the borough of *Southwark*, respectively, nor shall, by word, message, writing, or in any other manner, endeavour to persuade any elector to give, or to dissuade any elector from giving, his vote for his choice of any person to be a mem-



justices, receivers, and constables, appointed under that act, at the seven public police offices, interfering in the same elections, with the same penalty, and proviso.

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lic police of-  
fices, not to  
terfere in elec-  
tions.

Penalty.  
Proviso.

It is to be observed, that in prohibiting the interference of persons who are herein mentioned, as being forbidden to concern themselves in elections, or to persuade, or dissuade electors, with respect to their votes; neither by the law of parliament, as declared in the resolutions of the house, touching the interference of peers and lords lieutenants; nor by the several statutes touching the interference of persons hold-

Undue interfe-  
rence not de-  
clared to avoid  
elections.

“ber to serve in parliament  
“for the said counties, or for  
“the said city and liberty of  
“*Westminster*, or borough of  
“*Southwark*; and every such  
“justice, receiver, or con-  
“stable, as aforesaid, offend-  
“ing therein, shall forfeit the  
“sum of one hundred pounds,  
“one moiety thereof to the  
“informer, the other moiety  
“thereof to the use of the  
“poor of the parish or place  
“where such offence shall be  
“committed, to be recovered  
“by any person that shall  
“sue for the same, by action  
“of debt, bill, plaint, or in-  
“formation, in any of his ma-  
“jesty’s courts of record at  
“*Westminster*, in which no

“essoins, protection, privilege,  
“wager of law, or more than  
“one imparlance shall be  
“allowed; such action to be  
“brought within the space of  
“one year after such offence  
“so committed: Provided  
“nevertheless, that nothing  
“in this act shall extend, or  
“be construed to extend, to  
“subject any such justice,  
“receiver, or constable, as  
“aforesaid, to any penalty or  
“penalties, for any act or  
“acts done by him or them,  
“at or concerning any of the  
“said elections, in the dis-  
“charge of his or their duty  
“or duties, in their said re-  
“spective capacities.”



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ing particular offices, is it laid down, that an election would be invalidated by such interference.

The provisions of the law are aimed at the persons offending, and have for their object, by the means of solemn injunction, and of pecuniary penalties, the prevention of the offence (*a*).

SECTION 4. *Of the removal of the military from the place of election.*

ANY interference of the military at elections, has ever been a subject of great jealousy with the law of *England*.

By the early statute of 3 Edw. 1. c. 5. (*b*),

(*a*) It should seem, nevertheless, that although the declarations of the law are silent hereupon, that if a case were to arise, wherein a person whose election was in question could be shewn to have been the instigator of an interference which is declared to be illegal, and a violation of the freedom of elections, he might be considered as having

been guilty of practices, which would render his election void, upon the same principle as in cases of bribery at the common law. (See *ante*, 127.)

(*b*) The stat. 3 Edw. 1. c. 5. “*There shall be no disturbance of free elections.*”

“And because elections ought to be free, the king commandeth, upon great forfeiture, that no man by



which was passed in aid of the common law, the king commandeth, upon great forfeiture, that no man, by force of arms, nor by malice, or menacing, shall disturb any to make free elections.

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None by force of arms, malice, or menacing, to disturb elections.

This statute was not particularly aimed at parliamentary elections, and it seems doubtful from its tenor, whether it could have had in contemplation any military interference, at such elections. It will be seen, however, that it has been recognized by the stat. 8 Geo. 2. c. 30, as connected both with such elections, and with such interference.

2 Inst. 169.

But in the interval between the passing of these two statutes, viz. on the 17th November, 1645, the house of commons came to the following resolution: "That this house doth declare and order, that all elections of any knight, citizen, or burgess, to serve in parliament, be made, without interruption or molestation by any commander, governor, offi-

4 Journ. 346.  
Elections to be made without interruption or molestation, by commanders, governors, officers, or soldiers, not being electors.

"force of arms, nor by malice, free election;" he also observes, that "this act extends to all elections, as well by those that at the making of this act had power to make them, as by those whose power was raised or created since this act."

Lord Coke says, this act was penned in the name of the king, "and therefore the king bindeth himself not to disturb any electors to make



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“cer, or soldier, that hath not in the county,  
“city, or borough, respectively, right of elect-  
“ing (a)”

The object of this resolution has been further effectually enforced by the statute 8 Geo. 2. c. 30. (b), which recites, that by the ancient common law, all elections ought to be free; and also recites the above statute of 3 Edw. 1. c. 5.; and that the freedom of elections of members to serve in parliament is of the utmost consequence to the preservation of the rights and liberties of this kingdom; and that it had been the usage and practice, to cause any regiment, troop, or company, or any number of soldiers, which had been quartered in any city, borough, town, or place, where any election of

(a) It was also resolved, that this order should be sent to *Reading* at the next election (an election being about to take place there), and that it should be printed.

(b) About the year 1735, there was a great increase of the standing army; and, in consequence of an address from the house of lords, an account of the several allotments for the quartering of the land forces was laid before them. On the 20th March, 1735, when the mutiny bill was reported with amendments, the judges were

directed to prepare a bill for quartering soldiers during elections, and in consequence a bill was prepared, which, after undergoing some alterations, was passed, and became the statute 8 Geo. 2. c. 30. (24 Lords' Journ. 496.) Mr. serjeant *Peckwell* states, from the debate, as given in the *Gentleman's Magazine* of that year, that it seemed “to be agreed on all hands, that nothing but a necessity so strong as to supersede all law, could justify a returning officer in demanding the assistance of the military, or a com-



members to serve in parliament had been appointed to be made, to remove and continue out of the same during the time of such election, except in the particular cases in the act specified.

mander in affording it." 1 Peck. 89, (n). See Heyw. Co. El. 566.

The stat. 8 Geo. 2. c. 30.

"An act for regulating the quartering of soldiers, during the time of the elections of members to serve in parliament."

"Whereas by the ancient common law of this land, all elections ought to be free; and whereas by an act passed in the third year of the reign of king Edward the first, of famous memory, it is commanded, upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election;" "and forasmuch as the freedom of elections of members to serve in parliament is of the utmost consequence to the preservation of the rights and liberties of this kingdom; and whereas it hath been the usage and practice to cause any regiment, troop, or company, or any number of soldiers which hath been quartered in any city, borough, town, or place, where any election of members to serve in parliament hath been appointed to be made,

"to remove and continue out of the same during the time of such election, except in such particular cases as are hereinafter specified:" "To the end, therefore, that the said usage and practice may be settled and established for the future, be it enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same, that when and as often as any election of any peer or peers to represent the peers of Scotland in parliament, or of any member or members to serve in parliament, shall be appointed to be made, the secretary at war for the time being, or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall, and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders in writing for the removal of every such regiment, troop, or company, or other number of



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On appoint-  
ment of elec-  
tion, secretary

And thereupon, in order that that usage and practice may be settled and established for the future, that act requires that whenever any election of any members to serve in parliament, shall be appointed to be made, the secretary at war, or in case there shall be no secretary at war, the person officiating in his place, shall,

“soldiers, as shall be quar-  
“tered or billeted in any  
“such city, borough, town,  
“or place, where such elec-  
“tion shall be appointed to  
“be made, out of every such  
“city, borough, town, or  
“place, one day at the least  
“before the day appointed  
“for such election, to the  
“distance of two or more  
“miles from such city, bo-  
“rough, town, or place, and  
“not to make any nearer  
“approach to such city, bo-  
“rough, town, or place, as  
“aforesaid, until one day at  
“the least after the poll to be  
“taken at such election shall  
“be ended, and the poll-books  
“closed.”

§ 2. “And be it further  
“enacted, by the authority  
“aforesaid, That in case the  
“secretary at war for the  
“time being, or such person  
“who shall officiate in the  
“place of the secretary at  
“war, shall neglect or omit  
“to issue or send forth such  
“orders as aforesaid, accord-  
“ing to the true intent and

“meaning of this act, and  
“shall be thereof lawfully  
“convicted, upon any indict-  
“ment to be preferred at the  
“next assizes, or sessions of  
“oyer and terminer, to be  
“held for the county where  
“such offence shall be com-  
“mitted, or an information  
“to be exhibited in the court  
“of king’s bench, within six  
“months after such offence  
“committed, such secretary  
“at war, or person who shall  
“officiate in the place of the  
“secretary at war, shall for  
“such offence be discharged  
“from their said respective  
“offices, and shall from  
“thenceforth be utterly dis-  
“abled, and made incapable  
“to hold any office or em-  
“ployment, civil or military,  
“in his majesty’s service.”

§ 3. “Provided neverthe-  
“less, That nothing in this act  
“contained shall extend, or  
“be construed to extend, to  
“the city and liberty of *West-*  
“*minster*, or the borough of  
“*Southwark*, for and in re-  
“spect of the guards of his



at some convenient time before the day appointed for such election, issue proper orders in writing for the removal of every regiment, troop, or company, or other number of soldiers, which shall be quartered or billeted in any place where any such election shall be appointed to be made, out of such place, one day at least before the day appointed for such election, to the distance of two or more miles from such place, and not to make any nearer approach to such place, until one day at the least after the poll shall be ended, and the poll-books closed.

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at war, or person officiating as such, to order the removal of all soldiers from the place of election, one day at least before the day of election, a distance of two miles or more, to remain till one day after the end of the poll.

By § 2, the secretary at war, or person officiating as such, neglecting or omitting to issue such orders, and being convicted thereof, upon

Penalty on secretary at war, or person officiating, for neglect or omission.

“majesty, his heirs, or successors, nor to any city, borough, town, or place, where his majesty, his heirs, or successors, or any of his royal family shall happen to be, or reside at the time of any such election as aforesaid, for or in respect of such number of troops or soldiers only as shall be attendant as guards to his majesty, his heirs, or successors, or to such other person of the royal family as is aforesaid, nor to any castle, fort, or fortified

“place, where any garrison is usually kept, for or in respect of such number of troops or soldiers only whereof such garrison is composed.”

§ 4. “Provided likewise, That nothing in this act contained shall extend, or be construed to extend, to any officer or soldier who shall have a right to vote at any such election as aforesaid, but that every such officer and soldier may freely and without interruption attend and give his vote at



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indictment to be preferred according to the act, is to be discharged from his office, and disabled and incapacitated from holding any office or employment, civil or military, in his majesty's service.

Secretary at war, or person officiating, not liable in case of election upon vacancy, unless on notice given to him by the clerk of the crown, &c.

By § 5, the secretary at war, or person officiating as such, is not to be liable to any forfeiture or incapacity for not sending such order, upon any election to be made of a member to serve in parliament, on a vacancy of any seat there, unless notice of making out any new writ for such election, shall be given to him by the clerk of the crown in chancery, or other officer making out the same, which notice is to be given with all convenient speed, after making out such new writ.

Such exception in favour of

But this proviso is confined to the case of

"such election; any thing  
"hereinbefore contained to  
"the contrary thereof notwithstanding."

§ 5. "Provided always,  
"That the secretary at war,  
"or in case there shall be no  
"secretary at war, then such  
"person who shall officiate in  
"the place of the secretary at  
"war, shall not be liable to  
"any forfeiture or incapacity  
"for not sending such order  
"as aforesaid, upon any elec-  
"tion to be made of a mem-

ber to serve in parliament.  
"on a vacancy of any seat  
"there, unless notice of the  
"making out any new writ  
"for such election shall be  
"given to him by the clerk of  
"the crown in chancery, or  
"other officer making any  
"new writ for such election,  
"which notice he is hereby  
"directed and required to  
"give with all convenient  
"speed after making out the  
"said writ."



elections upon vacancies. The secretary at war, therefore, or person officiating in his place, is bound to observe the issuing of the writs upon the summoning a new parliament, and to act in conformity to this statute, without any such notice.

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secretary at war, &c. confined to case of election on vacancy.

An exception to the general operation of the act is made by § 3, whereby it is not to extend, or be construed to extend, to the city and liberty of *Westminster*, nor to the borough of *Southwark*, in respect of the guards of his majesty, nor to any place where his majesty, or any of his royal family, shall happen to be or reside at the time of such election, in respect of such troops as shall be attendant as guards to his majesty, or such other person of the royal family; nor, by the same clause, is the act to extend to any castle, fort, or fortified place, where any garrison is usually kept, in respect of the troops composing such garrison (a).

Act not to extend to Westminster nor to Southwark, nor to places of royal residence, in respect of troops attendant upon the king, or any of the royal family, nor to any castle, fort, or fortified place, where garrison usually kept, in respect of the troops composing such garrison.

By § 4, a provision is made that the act is not to extend, or be construed to extend, to any officer or soldier having a vote at any such election, but that such person may

Officers and soldiers having votes, may attend at elections to give them.

(a) On the 13th May, 1783, a motion was made in the house of commons, and the question proposed, "that it is the opinion of this house that the barracks erected for the use

" of troops since the passing of  
" the 8 Geo. 2. are not within  
" the exceptions of the said  
" act;" but it was withdrawn,  
51 Journ. 783.



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attend at the same, and give his vote, notwithstanding that act.

(*Ante*, 309.)

The language also of the before mentioned order, of the 17th Nov. 1645, evidently regards interference in a military capacity only, and does not operate in respect of any thing done in the character of an elector.

And indeed the legislature has expressly recognized the attendance of persons belonging to the militia, by the provision of the stat. 42 G. 3. c. 90. § 173. (*a*), that they shall not be liable to any penalty or punishment, for or on account of their absence, during the time they shall be going to vote at elections of a members to serve in parliament, or during the time they shall be returning from such elections.

Except in cases of the most urgent necessity, (*See post*, 315.) or where the legislature expressly sanctions a departure from the usual course, in respect of the

(*a*) The stat. 42 Geo. 3. c. 90. (*For the title of this act, and § 172, see ante*, 163.)

§ 173. " And be it further  
" enacted, That no officer,  
" non-commissioned officer,  
" drummer, or private man  
" of the militia, shall be

" liable to any penalty or  
" punishment for or on ac-  
" count of his absence during  
" the time he shall be going to  
" vote at any election of a  
" member to serve in parlia-  
" ment, or during the time he  
" shall be returning from  
" such election."



removal of the military, any violation of the law in this particular will inevitably draw down upon the persons offending, the displeasure of the house of commons; nor is it by any means clear, that it may not likewise avoid the election.

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In the case of *Westminster*, 15th, 17th, 21st, and 22d December, 1741, where there were riots during the election, and a body of troops were called in to assist in preserving order, the house declared the election void; but whether upon the ground of the general irregularity of the proceedings, or that of the presence of the military, is not stated.

24 Journ. 25,  
31. 35. 37.

The house, however, came to the following resolutions (a):

“That it appears to this house, that a body of armed soldiers, headed by officers, did, on

(a) The house resolved, “that in manifest violation of the freedom of elections.” And Mr. *John Lever*, high bailiff of the city of *Westminster*, at he was ordered into custody of the serjeant at arms; but the last election of citizens to serve in parliament for the said city, acted at the election in an illegal and arbitrary manner, in prejudice of the rights and liberties of the electors of the said city, and it does not appear in what particular act his misconduct consisted, or whether it related to calling in the military. See 24 Journ. 37.



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Friday, the 8th day of May last, come in a military manner, and take possession of the church-yard of *St. Paul, Covent Garden*, near the place where the poll for the election of citizens to serve in this present parliament for the city of *Westminster* was taken, before the said election was ended,”

Resolution  
against the  
presence of a  
body of armed  
soldiers at an  
election.

“That the presence of a regular body of armed soldiers, at an election of members to serve in parliament, is an high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom.”

Magistrates  
having unnecessarily called  
in the military  
at an election,  
reprimanded  
by the house.

24 Journ. 54.

The magistrates who had called in the military were, at the same time, ordered to attend before the house.

Upon their attendance, on 22d January, 1741, and confession of their having so done, they were ordered to attend again on the 23d January, in order to be reprimanded, on their knees, by the speaker; which reprimand from him they accordingly received (a).

Ibid.

(a) 23d January, 1741. esquires, attending according to order, were brought to the bar; and, upon their knees, Nathaniel Blackerby, George Howard, and Thomas Lediard,



In extreme cases, but in such cases only, the absolute inefficacy of all other means may create a necessity for military aid.

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Military only  
to be called in  
extreme cases.

But it is to be observed, that in any case where such measure is resorted to, it is adopted

Persons calling  
them in respon-  
sible for so do-  
ing.

reprimanded by Mr. Speaker (*Onslow*), as the house had directed.

The reprimand was as follows, viz.

“Mr. *Blackerby*, Mr. *Howard*, Mr. *Lediard*,

“You having, at the bar of this house, yesterday, confessed that you did send for, and cause to come, on Friday, the eighth day of May last, a body of armed soldiers, headed by officers, in a military manner, who did take possession of the church-yard of *St. Paul, Covent Garden*, near the place where the poll for the election of citizens to serve in this present parliament for the city of *Westminster* was taken, before the said election was ended, and you having acknowledged your offence therein, the house did order you to attend this morning, to be brought to the bar, to be reprimanded, on your knees, by me, for the said offence:

“I cannot better describe to you the nature of this offence you have been guilty of, than in the words of the resolution this house came to, up-

on their examination into that matter:”

(He then stated the latter of the above resolutions.)

“And it is impossible, if you well consider the terms of this resolution, but that you must have in your breasts the deepest sorrow and remorse for this rash act of your’s, which, if it had not been animadverted upon, might have given the most dangerous wound to the constitution of this free country, that perhaps it had ever felt:—this country, free, because this house is so, which this house can never be, but from the freedom of elections to it; and amidst the too many ways for violating that, none can be more pernicious, because none more quick, decisive, and permanent, than what you might unhappily have set a precedent for, and which might have grown to an extremity, under the specious and ready pretences of fears and necessity, that supersede all law; a precedent that would have received an authority from the place it be-



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under a great weight of responsibility; nor can it be justified, unless under an impossibility of otherwise preserving order.

The presumption is against the legality of such act.

The act itself will, in the first instance, be taken to be illegal, and the party having recourse to it will be called upon to justify it.

In extreme cases, the calling in the military justifiable.

In cases, however, such as those just alluded to, it would undoubtedly be justifiable; and indeed where it becomes imperiously necessary, it may be questionable, whether a refusal to re-

gan in—the seat of the government and legislature of this kingdom:”

“Necessity, which is to take place of law, must be left to the circumstances of every particular case; the act must be presumed to be wrong, inquired into as such, and excused only by the clearest proofs, that the necessity of it was real.”

“What you have done, is against one of the most essential parts of the law of the kingdom. Has any real necessity been shewn for it? There might be fears, there might be some danger, but did you try the strength of the law to dispel those fears and remove that danger? Did you make use of those powers the law has invested you with, as civil magistrates, for the

preservation of the public peace? No. You deserted all that, and wantonly, I hope inadvertently, resorted to that force the most unnatural of all others, in all respects, to that cause and business you were then attending, and for the freedom of which every *Briton* ought to be ready almost to suffer any thing. More might be said; but you have acknowledged your offence, and have asked pardon for it: this has disposed the house to lenity. Use it not to lessen the sense of your crime, but to raise in your hearts that sense of gratitude you owe to the house, for the gentle treatment you have met with on this occasion; in expectation of which you are discharged, paying your fees.”  
24 Journ. 54.



sort to it would be sanctioned by the house of commons (a).

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Under particular circumstances, the legislature has withholden the operation of the law with respect to the removal of the military. This, however, has only been done where an adherence thereto would, upon collateral grounds, have been attended with imminent danger; and then acts of parliament have been passed for the specific purpose, and only for a limited time (b).

The 8 Geo. 2. c. 18, suspended in certain cases.

(a) See the case of *Nottingham*, 1803, wherein this was made a subject of complaint against the magistrates, *post*, 326.

(b) By the statute 20 Geo. 3. c. 1, on account of the *French* and *Spanish* prisoners confined at *Winchester*, the then ensuing election for the county of *Southampton*, was directed to be holden at *New Alresford*, instead of at *Winchester*; and by the statute 20 Geo. 3. c. 50. § 2, it was directed to be so holden during the continuance of that act.

The stat. 20 Geo. 3. c. 50, recited the stat. 8 Geo. 2. c. 30; and that in the city of *Winchester* there was a house, or palace, belonging to his majesty, which it had been found necessary to use as a

prison, for confining and guarding a large number of *French* and *Spanish* prisoners, and that a number of troops had for some time past been stationed in the said city, for the purpose of guarding such prisoners; and that the number of such prisoners was so great, that they could not be removed during any election of members to serve in parliament for the said city, without great difficulty, expence, and hazard of escape; and that the removal of the said troops, necessary for the guard of such prisoners, would be attended with manifest danger, not only to the inhabitants of the said city, and persons resorting thereto, but to the public in general: And therefore, in order to the better guarding and safe keeping



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This was done with respect to elections at *Winchester* and *Shrewsbury* (a), during the

of such prisoners, during the time of any such election, enacted, that nothing in the said act contained should extend, or be construed to extend, to the said city, for such time only as it should be found necessary to detain such prisoners of war in the said house, or palace, and so far as the same related to such troops or soldiers only as should be necessary for the purpose of guarding any such prisoners of war; and it was provided, that the number of such troops should not, during the times of such election, exceed the proportion of three soldiers to every twenty prisoners so confined; and that such proportion of the said troops as should not be actually upon guard, should, during such election, remain in the barracks, until it should be necessary to relieve the said guard, after which time the former guard should immediately return to the said barracks, and so alternately during the continuance of such election.

(a) The same act, by § 3, recited, that a large building, in the neighbourhood of the town of *Shrewsbury*, and on the opposite side of the river *Severn*, had been lately fitted up for the reception of prisoners of war, and that it

might become necessary, for the better accommodation of such prisoners, to send a considerable number to that place, in which event a certain number of troops would be required for the guard of such prisoners; and that the said building was not distant above one mile from the usual place of election of members to serve in parliament for the said town of *Shrewsbury*, and county of *Salop*, respectively; and that the troops necessary for the guard of such prisoners could not with safety be removed during the time of such election: And enacted, that it should not be necessary, during the continuance of such prisoners there, to remove from the said building, or prison, the troops necessary for a proper guard of such prisoners; and that it should be lawful for one relief of the said guards to come, and return from thence, once in every twenty-four hours, for the purpose of such relief, during any election to be held for the said county or town respectively; any thing in the 8 Geo. 2. to the contrary notwithstanding.

§ 4. Provided and enacted, that not more than in the proportion of three soldiers to every twenty prisoners should be suffered to remain as a



time of the confinement of a number of prisoners of war, at each of those places, which would have rendered it dangerous to the neighbourhood, and to the public, that the troops stationed there should have been removed.

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**SECTION 5.** *Of the interruption of the proceedings at elections by riots.*

THE interruption of the proceedings at an election by riot and tumult, is a great violation of the freedom of elections; wherefore, and as such interruption will have the effect of im-

guard at the said building, during any such election; and that the soldiers necessary for the relief of the said guard should be quartered and remain, during such election, in the villages on the south-west side of the said river *Severn*, and distant at least two miles from the said respective places of election; and that none of the said troops should, during the time aforesaid, come to that side of the said river where such elections re-

spectively have been usually held, nor within any part of what is known and reputed to be the voting liberty of the said town.

This act was continued till the end of the then next sessions respectively, by § 5 of the act, and by the 21 Geo. 3. c. 43, and by the 22 Geo. 3. c. 29, during the continuance of hostilities with *France*, *Spain*, and *Holland*, or either of them; consequently it expired upon the peace, in 1783.



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pugning the return, it is highly important to prevent and repress any tendency to a breach of the law in this particular.

It is the duty not only (as will be seen) of the returning officer to do his utmost to carry into effect the exigency of the writ, and therefore to resist any interruption to the proceedings thereunder; but it is also the duty of magistrates, whether applied to or not, to assist in preserving the public peace.

There being a responsibility to the house of commons, in respect of the proceedings at the election, such proceedings are under their particular superintendence and protection; resort to which may be had in cases of difficulty (immediately, if they are sitting), in addition to the ordinary aid and powers of the law.

## 32 Journ. 95.

In case of interruption of the proceedings by riots, the house of commons may be applied to for directions and for protection.

*Middlesex*, 8th December, 1768, the sheriffs acquainted the house, that a numerous, daring, and outrageous mob, appeared that day at *Brentford*, at the election of a knight of the shire for the said county, and obstructed the freedom of the said election, and had by force and violence prevented the said sheriffs from going on with the poll; that several of the poll-books were missing, and that the said sheriffs



had adjourned the poll till the next morning; and therefore they applied for directions how to proceed in taking the poll, and desired the protection of the house.

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The order of the house thereupon was, "That the speaker do inform the sheriffs, that this house doth highly approve of their conduct in making application for the directions of this house, how they shall proceed on account of the daring and outrageous mob, which appears this day to have interrupted the freedom of the election for the said county."

Such application approved of by the house.

The house then gave directions as to the holding the poll, and that an application should be made to the magistrates of the county, acquainting them, "that it is the order of this house that the said magistrates do attend the said election, and do appoint a proper number of constables, and take every other means in their power to preserve the peace and freedom of the said election."

Resolution of the house for the preservation of the freedom of election,

The further order of the house was, "that Mr. Speaker do assure the said sheriff of the support and protection of this house, in the execution of their duty, and that this house will proceed with the utmost severity against any

and protection of the returning officer.



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person who shall dare to violate the freedom of the said election."

The house has not only thus afforded its protection to guard the proceedings at the election from violence and outrage; but where it has been discovered that particular persons have been the contrivers and promoters of the riot and tumult, they have, in many instances, passed resolutions against them; some offenders they have committed to custody; and, in a recent case, directed a prosecution to be instituted against such persons by the attorney-general.

Moreover, in a case where there has been, on the part of the magistrates present, an obvious want of exertion and effort to preserve peace, and the freedom of election, they came to a resolution of censure against such magistrates.

14 Journ. 24.  
Resolutions  
that riots at an  
election were  
occasioned by  
particular per-  
sons.

In the case of *Southwark*, 10th December, 1702, the committee reported, and the house resolved, that the tumult and riot (on account of which the election was avoided) was committed by the servants and agents of *Charles Cox* and *John Cholmley*, esquires, (the members returned.)



So in that of *Coventry* 20th November, 1722, in resolving that there were notorious and outrageous riots, &c. they stated, that they were caused by the agents and friends of the petitioners, who were the authors, contrivers, and promoters of the said riots, tumults, and seditions. Sect. 5.  
20 Journ. 60.

And they further resolved, "That it appeared to the house, that *Charles Buggs* was one of the principal contrivers and promoters of the riots, tumults, and seditions, at the late election of citizens to serve in parliament for the city of *Coventry*." 20 Journ. 60.

And he was ordered into custody.

Similar resolutions and orders were at the same time made against seven other persons.

In the case of *Knaresborough*, 24th January, and 26th and 27th February, 1805, where there was no execution of the precept by reason of riots, the committee, after stating that circumstance in their report to the house (March 1), and that the bailiffs and returning officers were prevented from proceeding to the election, by a violent tumult which took place in the borough on the 30th July then last past, the day

2 Peck. 382.  
385.

(S. C. post,  
when treating of  
special returns.)  
60 Journ. 14.  
85.



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60 Journ. 112,  
113.

appointed by the proclamation for holding such election; further stated, by a resolution reported at the same time, that it appeared to them, "that seven persons (naming them) were principally concerned in instigating or committing the outrages that took place in the said tumult, whereby the returning officers were prevented from holding an election of a member to serve in parliament for the said borough (a)."

The report being made, a new writ was ordered on the same day.

(a) Before the special resolutions relative to the misconduct of the persons complained of had been passed, it was asked by one of the committee, whether notice should not have been given them of the charges made against them; but the counsel for the petitioners stated, that it was not usual in similar cases to give a notice: that no notice was given where the individuals, against whom a complaint was made, were not named in the petition; that *a fortiori*, it was unnecessary where they were named; since the charge against them became in some degree public, being entered on the journals of the house: that it was the common practice of committees to pass special resolutions respecting the misconduct of

individuals, as it was disclosed before them in evidence, although it was not made a matter of allegation in the petition, and although no notice had been given to the individuals; an instance of which was referred to in the case of *Ilchester*, 1803, (1 Peck. 306), where particular persons, by name, had been resolved to have been engaged in a system of corruption; and that resolution had been reported to the house. It was also stated, that no notice had been given to the sheriffs, in the case of *Middlesex*, 1804, of the charges made against them. It was admitted, that in the present case no notice had been given to the persons accused. 2 Peck. 386.



The report was taken into consideration by the house on the 14th March, when, after reading from the journal the entries in the case of *Shaftsbury*, 14th February, 1776, and *Ilchester*, 18th May, 1803, the house agreed with the committee in the above resolution, and ordered, that the attorney-general should forthwith prosecute the seven persons named in the report for their said offences, which was accordingly carried into effect (*a*).

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60 Journ. 141.

With respect to the ordinary powers of the law :

Ordinary  
powers of the  
law as to riots.  
(*Ante*, 302.)

The inhibition of the stat. 3 Edw. 1. c. 5. which has been noticed before, applies also to the present subject. Lord *Coke* observes upon that statute, that the disturbers are to be punished by grievous fines and imprisonment.

2 Inst. 169.

The stat. 13 Hen. 4. c. 7. requires three or two justices of the peace, and the sheriff or

(*a*) The information was tried at the summer assizes for *Yorkshire*, 1805, when three persons of the names of *Allen*, *Abbott*, and *Dewes*, were found guilty. On the 5th February, 1806, *Allen* (having been in the king's bench prison since 9th November, 1805) was sentenced by the court to be imprisoned in Newgate six calendar months, and to give security for his good behaviour for

four years, himself in £100, and two sureties in £50 each. *Abbott* and *Dewes* were sentenced to be imprisoned in the custody of the marshal of the king's bench three calendar months, and to give security for four years, themselves in £100 each, and their sureties respectively in £50 each. *Abbott* had been imprisoned since 9th November, 1805, and *Dewes* since 1st February, 1806. 2 Peck. 386.



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Justices and  
sheriff, or un-  
der sheriff, to  
suppress riots.  
To record  
them, and re-  
cord to be con-  
viction.

Glanv. 141.  
143.

Any one may  
interfere to  
keep the peace.

If riots serious,  
&c. riot act  
may be read.

under-sheriff, to come with the *posse comitatus*, if need be, and suppress riots; and gives them power to record them when committed in their presence, which record alone is to be a sufficient conviction of the offenders.

In the case of *Pontefract*, 18th May, 1624, where there having been a disturbance at the election, it was holden void, it is said in the resolution of the committee and of the house, "that no place is without constables, and every man is an officer to see the peace kept, whereby such disturbance might be prevented, as well in a borough, as in a county at large, where the sheriff hath *posse comitatus*."

If the riots be so serious as to require it, and the number of persons assembled is sufficient, the proclamation (a) of the riot act, 1 Geo. 1. c. 5. may be read, in order to bring the offenders within that statute; whereby, by § 1, if any twelve persons are unlawfully assembled to the disturbance of the peace, and any one justice of the peace, or more, or the sheriff, under-sheriff of the county, or the mayor, or bailiffs, or other head

(a) The proclamation. "Our sovereign lord the king  
"chargeth and commandeth  
"all persons being assembled  
"immediately to disperse  
"themselves, and peaceably  
"to depart to their habitations,  
"or to their lawful business,  
"upon the pains contained in  
"the act made in the first year  
"of king *George*, for prevent-  
"ing tumults and riotous as-  
"semblies. God save the  
"king."



officer, or justice of the peace, of any city or town corporate, shall think proper to command them by proclamation to disperse, if they contemn his orders, and continue together for one hour afterwards, such contempt shall be felony without benefit of clergy. And further, by § 5, if the reading of the proclamation be by force opposed, or the reader be in any manner wilfully hindered from the reading of it, such opposers and hinderers are felons without benefit of clergy; and all persons to whom such proclamation *ought to have been made*, and knowing of such hinderance, and not dispersing, are also felons without benefit of clergy.

This measure, however, will be regarded with jealousy by the house of commons; and they will be ever vigilant to see that such provision of the law has not been made a subject of abuse (*a*).

20 Journ. 621, 622.

Riot act not to be read unnecessarily.

In the case of *Chipping Wycombe*, 17th March, 1725, it was resolved, "That *Edward Marshall*, having presumed to read the proclamation

(*a*) *Wareham*, 18th October, 1722. The petition contained an allegation that the mayor adjourned the poll till four o'clock in the afternoon, when the petitioners, who were magistrates and voters, went to the place in an orderly manner; but the mayor, to

terrify them, ordered the serjeant at mace to read the proclamation against riots and unlawful assemblies, whereby they were obliged to return to their respective homes. 20 Journ. 23. There is no further entry in the journal.



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against riots, while the burgesses of the borough of *Chipping Wycombe*, in the county of *Bucks*, were legally assembled, by virtue of his majesty's writ, for the election of a burgess to serve in this present parliament for the said borough, without having sufficient authority so to do, is guilty of a high infringement of the freedom of elections."

And he was ordered into the custody of the serjeant at arms.

It does not appear in what capacity *Marshall* had acted, but the resolution establishes that the house will inquire into the propriety of the measure in question.

Military aid may be called in; but only as an act of necessity.

Another resource, but only as an act of necessity, is that of calling in the aid of the military.

(*Ante*, 313.)

That this is not to be done upon light or trivial grounds has been already said, the presence of a military force at elections being forbidden by law; but there may be cases when that which generally would be deemed a violation of the freedom of elections, may become, in the particular instances, its support.

1 Peck. 77. 80.  
58 Journ. 15.  
23. 263. 342.

In the case of *Nottingham*, 24th and 26th November, 16th March, and 20th April, 1803,



it was made a subject of complaint against the magistrates, that, during the most enormous and unexampled riots, they declined to call in the military; Mr. *Coke* alleging in his petition, that a scene of riot took place, utterly incompatible with the freedom of election, and by which at least six hundred persons were prevented from voting for him; that these riots were caused and continued by persons in the interest of Mr. *Birch*, the opposite candidate; and that certain aldermen (named), as such, being magistrates of the town, though repeatedly applied to, took no effectual steps to prevent the violent and illegal acts which were there committed; and that, when at last the riots increased to such a degree as to render the calling in of an extraordinary force necessary, they refused to have recourse to it, although they had the first legal advice to warrant them in pursuing such a measure.

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*Quære, whether magistrates are justified in declining to call in the military, where the riots cannot otherwise be suppressed?*

Upon this head of complaint it was proved, that Mr. *Coke's* committee applied to the mayor to call in the military, who were stationed at the distance of two miles from the town, to quell them; that Mr. *Birch* protested against such a measure; that in fact the mayor ordered the military into the town, but on their arrival stopped the poll, which was not resumed till it



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was thought that quiet was so far restored, as to admit of their being sent away again.

1 Peck. 85, 86.

58 Journ. 263.

Upon this charge of refusal to call in the military, the committee expressed no opinion; but resolved, that “Mr. *Coke*, after sustaining several insults, and suffering personal violence, was obliged, from the just apprehension of hazard to his life, to leave the place, and could not venture to return; and that a large body of electors were deterred from exercising their franchise of voting.”

They also came to a resolution, “That it appears to this committee, that *John Davison*, the mayor, and *Joseph Oldknow* and *Thomas Oldknow*, two of the aldermen of the said town and county of the town of *Nottingham*, took no effectual means to preserve the freedom of election, or restore it when so violated, or to punish the offenders (a).” To which resolutions the house agreed.

(a) Mr. serjeant *Heywood*, Co. El. 573, observes, “that this was perhaps the first time that, in a petition complaining of an undue election and return, it has been alleged, as a ground of crimination against magistrates, that they did not call in the aid of the military

to preserve the peace. It is certainly a measure to be resorted to only in the last extremity, and from the general terms in which the resolution, criminating the mayor and other magistrates of *Nottingham*, is drawn up, it is left uncertain whether the



The language of this resolution, though it evidently imports that there ought to have been more energy on the part of the magistrates, to suppress the disorders which prevailed at the election, leaves it uncertain as to the measures which they considered as proper to have been adopted, and whether or not recourse ought to have been had to military aid.

That which has been hitherto stated, rather applies to riots of a general nature; but it is further to be observed, that the law, in order to prevent every tendency to such disturbance of the proceedings, will not permit any, even the smallest interruption of this nature, and any person so offending, may be committed to custody forthwith, and without a warrant.

Persons interrupting the proceedings at an election may be committed to custody.

*Oxford University*, 1st March, 1625, the committee thought fit that the vice-chancellor should be sent for, to be examined concerning the election.

1 Journ. 826.

10th March, they reported their doubt, whe-

1 Journ. 834.

committee was of opinion that they were justified in declining so long to call in the military, and in sending the soldiers away upon finding the poll

was stopped. The sheriff's conduct, however, in refusing to proceed with the poll in the presence of an armed body, met with no reprehension."



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ther one *Varver* was committed for a misdemeanor, or for opposing the vice-chancellor in the election.

1 Journ. 837.

On the 17th March, the committee reported their opinion, that he was justly committed by the vice-chancellor for misdemeanors.

1 Taunt. 146.

A question as to the legality of such a commitment was tried in the case of *Spilsbury v. Micklethwaite* (a), Hil. T. 48 Geo. 3. where an action was brought against the sheriff of *Sussex*,

(a) The action was for an assault, battery, and false imprisonment. The defendant pleaded, 1st, Not guilty. 2dly, (in substance) That at the time in question an election was lawfully had at *Lewes*, of two knights to serve in parliament for the county of *Sussex*, at which the defendant, then being sheriff of the county, presided, and because the plaintiff, at the said election, threatened to assault him, and did assault him, and made a great noise and disturbance at the said election, and obstructed and molested the defendant, as such sheriff, in the execution of his duty at such election, he charged one of the headboroughs of *Lewes* to take the care and custody

of the plaintiff, in order to carry him before a justice of the peace, that he might be dealt with according to law.

The jury found that the plaintiff, who was a freeholder of the county, did not assault the defendant as alleged in the plea, but were of opinion that all the other facts contained in the plea were proved.

At the trial at the *Sussex* summer assizes, 1807, a verdict was taken for the plaintiff, damages one shilling; with permission to the defendant to move that it might be set aside, and a non-suit entered.

This verdict was, after hearing the arguments in support of it, set aside, and a non-suit was directed to be entered.



by a person whom he had committed to custody for turbulent conduct at the election.

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The jury found, that the plaintiff who was so committed, threatened to assault the defendant; that he made a great noise and disturbance at the election, and obstructed and molested the defendant, as sheriff, in the execution of his duty at the election; and that the defendant therefore charged a headborough with the custody of the plaintiff, in order to carry him before a justice of the peace.

This commitment was, upon solemn consideration of the court of common pleas, holden to be legal; and lord chief justice *Mansfield*, in giving the judgment, said, "The question resolves itself into this, whether the conduct of the plaintiff, in making a great noise and disturbance at the election, and, by means of that noise and disturbance, obstructing and molesting the sheriff in the execution of his duty, was sufficient to justify the defendant in the measure which he pursued. I am surprized that this question should be seriously argued. At the time when the trespass was committed, the defendant was presiding at the county court. He was engaged in the discharge of a most important duty, a part of which consists in the ad-



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ministration of oaths, and in deciding upon the qualifications of the electors. The conduct of the plaintiff, in disturbing the order and proceedings of the court, would have justified the interposition not only of the sheriff, but of any of the freeholders, who are the judges of that court, or, perhaps, of any other individual; for every man is interested in the due election of representatives to parliament. But it is said that the sheriff has no authority to commit. He certainly has no authority to commit as a magistrate; nor did he in this case commit the defendant. The extent and nature of the powers appertaining to the office of sheriff, are objects entirely foreign from the present inquiry. It is sufficient, in this instance, to observe, that it was the duty of the sheriff to preserve order and decency. The proceedings of the court were interrupted by the turbulent conduct of the plaintiff; the defendant was bound by his situation to prevent the continuance of this interruption, and he could not have adopted a better mode for that purpose, than by ordering the plaintiff to be carried before a magistrate, to give security for his good behaviour. It has been objected, that the facts found by the jury do not amount to any offence. Has the law of *England*, then, been so anxious to preserve the purity and freedom of election,



upon which the rights and liberties of the people depend; has it established various forms and regulations for this purpose; and shall it be said, that it is no offence to defeat these provisions, and to render them nugatory and vain? Is it no offence to interrupt the exercise of those powers which have been entrusted with this view to the sheriff; to annul so many legislative provisions; to deprive the country of the benefit of a system so anxiously established; and to attack the most valuable rights and privileges of the people of *England*? What should we say of those laws which we are so much accustomed to extol, if conduct of such a description could be pursued with impunity? This is a question upon which I cannot bring myself to entertain a moment's doubt. The plaintiff was guilty of a serious offence against public order; he was guilty of a breach of the peace, for which he might have been punished by indictment. His conduct was such as to call for immediate interposition. The defendant was not only justified in what he did, but it was his duty to adopt means (and what better could have been chosen?) to prevent the plaintiff from continuing to interrupt the proceedings of the court."

The law, in this case, does not appear to



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(Ante, 324.)

hinge upon any peculiar powers vested in the sheriff. It seems, therefore, that the same doctrine would equally apply to the case of an interruption of a poll under the superintendence of any other returning officer. This inference accords with the language of the resolution before mentioned, in the case of *Pontefract*, 18th May, 1624.

Where proceedings are interrupted by riots, the election will generally be void.

(See post, *Morpeth*, 336, 337.)

It only remains to observe, that wherever there has been an interruption of the proceedings by riot and tumult, notwithstanding that the returning officer has been able to continue and finish the poll, and to comply with the exigency of the writ, by the return of members, the election has been holden totally void: but in a case, where the riot which prevailed after the close of the poll, and before the making the return, was found to have been contrived and promoted by the sitting member, whose return was executed by the returning officer under compulsion, when he was about to return the opposite candidate, the candidate who so ought to have been returned, and who had the majority of votes, was seated.

1 Journ. 797, 798.

Glanv. 143.

14 Journ. 24.

15 Journ. 278.

20 Journ. 53.

Ibid. 60.

The elections for *Pontefract*, 28th May, 1624; *Southwark*, 10th December, 1702; *Coventry*, 5th February, 1706; *Westminster*, 6th November, 1722; *Coventry*, 20th November,



1722, and 22d March, 1736; *Westminster*,  
 22d December, 1741; *Pontefract*, 24th No-  
 vember, 1768; and *Nottingham*, 1803; were  
 severally avoided upon this ground.

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22 Journ. 319.

24 Journ. 37.

32 Journ. 68.

1 Peck. 77.

In the above case of *Southwark*, 10th Decem-  
 ber, 1702, the committee resolved, that it was  
 their opinion, "that there was a great tumult  
 and riot, at the election of burgesses to serve in  
 parliament for the borough of *Southwark*, in  
 the county of *Surrey*," and that the election  
 was void.

14 Journ. 24.

In that of *Coventry*, 5th February, 1706,  
 they resolved, "That it appears to this house,  
 that there hath been a notorious riot and tu-  
 mult, and other illegal practices, at the election  
 of citizens, to serve in this present parliament  
 for the city of *Coventry*, in contempt of the  
 civil authority, and in violation of the free-  
 dom of elections;" and that the election was  
 void.

15 Journ. 278.

In the subsequent cases above mentioned,  
 there have been resolutions substantially simi-  
 lar; and the same principle will hereafter be  
 shewn to have guided the decisions, in questions  
 as to special returns, upon the ground of inter-  
 ruption of the proceedings by riots.

(See post, in the  
 chapter upon  
 the Return,  
 and the cases  
 there.)



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Elections not void on account of riots, unless the proceedings are interrupted.

But in order to make the election void, it must appear that the riot and disturbance was such as really to interrupt the proceedings; inasmuch as otherwise it cannot be considered that the freedom of election has been violated.

10 Journ. 254. Where there was evidence tending to shew riot at an election, but none of interruption of the proceedings, election not avoided.

Thus, in the case of *Exeter*, 6th August, 1689, where it was insisted, on the part of Mr. *Speke*, the petitioner, that the election was disturbed by several butchers, and that it was a void election, the evidence in support of which, only went to shew, that one man was knocked down, and that if any person cried out against Mr. *Bale*, the sitting member, the butchers cried, "Knock them down;" and there was evidence, on the other hand, on the part of the sitting member, that it was a peaceable election; the committee reported, and the house agreed, that the sitting member was duly elected.

(*Ante*, 334.)

1 Doug. 147.

The exception alluded to, with respect to the avoidance of elections actually interrupted by riots, rests upon the case of *Morpeth*, 6th December, 1774, and 24th and 27th January, 1775.

35 Journ. 15. 75. 83. Where there were riots after the

The petition of Mr. *Byron* stated, that Mr. *Delmé*, Mr. *Eyre*, Mr. *Bigge*, and the petitioner, were candidates; that Mr. *Delmé* and the



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petitioner, at the conclusion of the poll, had the majority of legal votes, in the judgment of the two bailiffs, who presided, they being the proper returning officers; and who accordingly declared them duly elected; but that they were afterwards compelled, by the violence and threats of a numerous and outrageous mob, to sign a return of Mr *Eyre*, instead of the petitioner (together with Mr. *Delmé*); praying therefore, that the name of Mr. *Eyre* might be erased from the return, and the petitioner's inserted instead thereof, &c.

close of the poll, and before the return, and the return of one of the sitting members was executed by compulsion, those riots, and such compulsion, having been contrived and promoted by him, his election was avoided, and the petitioner, who had the majority, seated.

It appeared that, at the close of the poll, the majority was, and was declared to be, in favour of *Delmé* and *Byron*; that the bailiffs were proceeding to make a return of them, when they were forced, by open violence, and a just apprehension of immediate danger, both on the evening of the election, and the next morning when the return was executed, to sign a return of *Eyre* and *Delmé*.

It was also proved, that Mr. *Eyre*, on the morning of the election, before it began, made a very inflammatory speech to the people; that after the riot began, he having retired some time before, the returning officers sent him word, they would return whom he pleased; and that



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an answer being brought them, that they must return himself and *Delmé*, they complied, on which the riot ceased; that he insisted, the day following, that one of the returning officers should deliver the return to one of his partizans, and neither carry it himself, nor accompany the other, while he should carry it, to the sheriff; and that, on one of the returning officers refusing to comply with some demand of his, he said, "*If you don't*," and then looked round to the mob, implying, as the returning officer thought, that if he did not, the mob would compel him.

The committee determined, that Mr. *Eyre* was not duly returned; and that Mr. *Byron*, the petitioner, ought to have been returned; and the return was amended accordingly (a).

(a) The counsel for the petitioners insisted that the committee ought to make a special report against those concerned in the riot, that the house might proceed against them, as had been done in other cases of the same sort; and they cited the case of *Coventry*, 20th November, 1722, (*ante*, 321.) The committee, however, made no special report.



## Sect. 6.

SECTION 6. *Scotland.*

THE general principle, that elections ought to be free, applies equally with respect to elections for places in *Scotland*, not only immediately for members of parliament, but with respect to certain previous elections, which will be explained hereafter.

(See *ante*, sect. 1.)  
Freedom of elections.

With respect to the interference of peers :

(See *ante*, sect. 2, page 283. 285.)

The standing order of the house of commons, embraces the case of elections for parliament; but the terms of it do not seem to contemplate the previous elections above alluded to.

Interference of peers.

With respect to the interference of persons holding certain offices :

(See *ante*, sect. 3.)

The interference of lords lieutenants of counties falls within the standing order of the house of commons before mentioned.

Interference of lords lieutenants of counties.  
(*Ante*, 286.)

The prohibition of the interference of other persons holding certain offices, rests upon vari-

Interference of persons holding certain offices.



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ous acts of parliament, and it depends upon the tenor of each, how far it may be operative at elections in *Scotland*.

(*Ante*, 291,  
292.)

The stats. 5 W. & M. c. 20, and 12 and 13 Will. 3. c. 10, which prohibit the interference of officers of the excise and customs, having passed before the union with *Scotland*, do not operate at elections there; but, by a subsequent statute (*a*), the same prohibition is since extended thither.

(*Ante*, 293.)

(*Ante*, 295, 296,  
where see the  
provisions of  
these statutes.)

The statute 9 Ann. c. 10, forbidding the interference of officers of the post-office, and those of 9 Ann. c. 11, and 10 Ann. c. 19. forbidding that of persons employed in charging, collecting, receiving, or managing any of the duties granted by those acts, as before stated, evidently apply to *Scotland*.

Persons prohibited by 9 Ann. c. 10, and c. 11, and 10 Ann. c. 19, from interfering at elections, not to interfere at elections of members of parliament or of delegates.

And, as applicable to elections there, the interference prohibited by these statutes is not confined to elections immediately for parliament; the same prohibition operates also at elections of delegates (or commissioners for choosing burgesses for the boroughs).

(*a*) The stat. 10 Ann. c. 19.



With respect to the removal of the military from the place of election :

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(See *ante*,  
sect. 4.)

The stat. 8 Geo. 2. c. 30, and the law as before stated, applies to elections in *Scotland*, for members of parliament. (*Ante*, 305.)

There is also a provision in the statute 42 Geo. 3. c. 90. § 168. (*a*), that persons belonging to the militia of *Scotland* shall not be liable to any penalty or punishment, in respect of their absence for the purpose of voting at elections, corresponding with that before stated as to the militia of *England*. (*Ante*, 310.)

With respect to the interruption of the proceedings at elections by riots : (*See ante*,  
sect. 5.)

The electors in *Scotland* for members of parliament being at no election very numerous, it is more easy to preserve order ; but the law, as before stated, would, upon general principles, be equally applicable there (*b*).

(*a*) For the title of this act, see *ante*, 229. The 168th section is copied from the stat. 42 Geo. 3. c. 90. § 173. which see, *ante*, 310. of session, upon the effect of force and violence used in the elections of magistrates and counsellors in the boroughs in *Scotland*, see 1 Wight, 344.

(*b*) For cases in the court 358.



## Sect. 7.

SECTION 7. *Ireland.*

(See *ante*,  
sect. 1.)  
Freedom of  
elections.

THE general doctrine of the freedom of elections, as before stated, will apply also to elections for places in *Ireland*.

(See *ante*, sect.  
2, page 283.  
285.)

With respect to the interference of peers:

Interference  
of peers.

The standing order of the house of commons, which was newly modelled upon the union, prohibits the interference of all peers, not being peers of *Ireland*, at the time elected, and not having declined to serve in parliament for any place in *Great Britain*, except in the case of their becoming candidates (which cannot be the case in *Ireland*).

(See *ante*,  
sect. 3.)

With respect to the interference of persons holding certain offices -

Interference of  
governors of  
counties.

(*Ante*, 286.)

The interference of governors of counties, is comprised in the same standing order, and is prohibited in the same qualified manner, as that of lords lieutenants.



With respect to the removal of the military from the place of election :

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(Ante, sect. 4.)

There is no law relating to elections in *Ireland*, which corresponds with that which forbids the presence of a military body (a) at elections in *England* (b).

Military not necessarily to be removed from place of election.

With respect to the interruption of the proceedings at elections by riots :

(Ante, sect. 5.)

By the *Irish* stat. 35 Geo. 3. c. 29. § 12, if any person or persons shall violently, riotously, or outrageously, interrupt any election, or the proceedings of the poll, such disturbance, riot, or misbehaviour, is not to be any excuse for the close of the poll, but the returning officer is to proceed as therein directed. It is, however, at the same time, made highly penal so to interrupt the proceedings; and considerable power has been given to returning officers, to enable them to enforce regularity and good order.

App. ccxlv.  
Riots to be no excuse for closing the poll.

(See post, 687.)

By the same clause, persons convicted of having violently, riotously, or outrageously, disturbed the court, or otherwise misbehaved, so as forcibly to interrupt the proceeding of the poll;

Riotously interrupting the poll, or injuring the poll-book,

(a) *Downpatrick*, 3d April and 20th June 1815.—One of the charges contained in Mr. *Ruthven's* petition was, that Lord *Glerawley*, the sitting member, had procured the interference of the military. Lord G. was holden duly elected, 70 Journ. 87. 408.

(b) The stat. 49 Geo. 3. c. 120, has provided by § 62, that persons in the militia of *Ireland*, having votes at elections there, may have leave for a reasonable time, to go and return from such elections. App. ccclxxxix.



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or forcibly taking or secreting the same, or the writ or precept, felony, and punishable with transportation or imprisonment, not exceeding 7 years.

*App. cccxxxv.*

And see post.

515 (n).

Returning officers at any elections may summon constables, &c. who are to attend during whole election, under the penalty herein.

*App. ib.*

Constables, &c. convicted of breach of peace, guilty of a misdemeanor, and liable to be imprisoned.

*App. ib.*

Returning officers may commit persons rioting, &c.

or having wilfully effaced, obliterated, torn, altered, or destroyed, the whole, or any part of the poll-book of the returning officer or officers, or of any deputy, whereon any thing relative to the election shall have been entered; or of having forcibly or fraudulently taken or secreted the same, or any part thereof, or the writ or precept for holding the election, are to be adjudged guilty of felony, and transported for seven years, or imprisoned for any time not more than seven years, at the discretion of the judge or judges trying such persons.—Moreover, the stat. 57 Geo. 3. c. 131. by § 34, empowers returning officers at all elections to summon all constables, bailiffs, or other peace officers to attend and keep the peace; and any such constable, bailiff, or peace officer neglecting to attend during the whole election, is to forfeit his office, and all salary due to him.—By § 35, any constable, bailiff, or other peace officer, convicted of a breach of the peace during an election, is to be adjudged guilty of a misdemeanor, and imprisoned for any time not more than twelve calendar months.—And, by § 36 of the same statute, returning officers, or their deputies at any election, are authorized to commit all persons to gaol for a time not exceeding 24 hours, who shall be found rioting or interrupting the poll, or wilfully preventing the approach of electors to the place of polling.



## CHAPTER II.

## OF THE WRIT (a).

SECTION 1. *Of the issuing writs upon a new parliament, and when returnable.*

SECTION 2. *Of the issuing writs upon vacancies, during a parliament, and when returnable.*

SECTION 3. *Of the controul of the house over the writ.*

SECTION 4. *Of the delivery of the writ, and of the indorsement to be made thereupon.*

SECTION 5. *Scotland.*

SECTION 6. *Ireland.*

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**W**HEN it is the pleasure of the crown to dissolve the parliament, and to call a new one, an order is made by the king in council, that the lord chancellor of *Great Britain* should cause the great seal to be affixed to a proclamation for that purpose (b).

On dissolution, and calling a new parliament, order by king in council for proclamations.

(a) For the writ to the sheriff on a general election, see *Appendix*, vi. The form now in use corresponds in substance, and is, with the transposition of a few words, similar to that given by *White Locke*, as of the 13 Car. 2. See *Whitel.* 1 Com. 1, 2, 3, for the Latin writ, and his translation. Mr. serjeant *Heywood*, in his book on borough elections, chap. 4, has traced the

form of the writ from the 49 Hen. 3

(b) See the entry of such order taken from the books of the privy council, *Append.* v. It is now so much a matter of course to call a new parliament immediately upon the dissolution of the old, that the same proclamation announces the royal pleasure for dissolving and for convening.



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Order by king  
in council for  
issuing writs.

This order is accompanied by another order, made also by the king in council, stating, that his majesty has, by his royal proclamation, been pleased to dissolve the parliament, and that he is pleased, with the advice of his privy council, to order, that the lord high chancellors of *Great Britain* and *Ireland* should, respectively, cause writs to be issued for calling a new parliament, to meet at the place and time directed by such order (a).

(a) For an entry of this order, taken from the books of the privy council, see *Append. v.*

From the entry in *D'Ewes*, 2. the practice appears to have been, that, upon summoning a new parliament, a warrant issued to the lord chancellor, commanding him to cause so many writs to issue under the great seal as had been usual and customary for the purpose of calling a new parliament; and this is mentioned in several books as the existing practice; but upon inquiry, I find that that which is above stated is now the practice.

The following is the form of the warrant which was formerly thus issued to the lord chancellor:

“ *Elizabeth*, by the grace  
“ of God, queen of *England*,  
“ *France*, and *Ireland*, de-  
“ fender of the faith, &c. To

“ our right trusty and right  
“ well beloved *Nicolas Bacon*,  
“ knight, lord keeper of our  
“ great seal of *England*, greet-  
“ ing:

“ Whereas we, by our coun-  
“ cil, for certain great and  
“ urgent causes concerning  
“ us, the good estate and com-  
“ monwealth of this our  
“ realm, and of the church  
“ of *England*, and for the  
“ good order and continuance  
“ of the same, have appointed  
“ and ordained a parliament  
“ to be holden, at our city of  
“ *Westminster*, the first day  
“ of April next coming, in  
“ which case divers and sun-  
“ dry writs are to be directed  
“ forth, under our great seal  
“ of *England*, as well for the  
“ prelates, bishops, and no-  
“ bility of this our realm, as  
“ also for the election of  
“ knights, citizens, and bur-  
“ gesses of the several coun-  
“ ties, cities, and boroughs,



Hereupon, in conformity to the statute 7 & 8 Will. 3. c. 25. § 1. (a), the writs are to be

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Writs to be issued from the

“ towns of the same, to be  
“ present at the said parlia-  
“ ment, at the day and place  
“ aforesaid.

“ Whereupon, we will and  
“ command you, forthwith  
“ upon the receipt hereof, and  
“ by warrant of the same, to  
“ cause such, and so many  
“ writs to be made, and sealed  
“ under our great seal, for  
“ the accomplishing of the  
“ same, as in like cases hath  
“ been heretofore used and  
“ accustomed. And this bill,  
“ signed with our hand, shall  
“ be as well unto you, as to  
“ every such clerk and clerks  
“ as shall make and pass the  
“ same, a sufficient warrant  
“ or discharge in that behalf  
“ given.”

(a) The stat. 7 & 8 W. 3.  
c. 25. “ *An act for the fur-  
“ ther regulating elections of  
“ members to serve in parlia-  
“ ment, and for the preventing  
“ irregular proceedings of she-  
“ riffs, and other officers, in  
“ the electing and returning  
“ such members.*”

“ Whereas by the evil prac-  
“ tices and irregular proceed-  
“ ings of sheriffs, under-she-  
“ riffs, mayors, bailiffs, and  
“ other officers, in the execu-  
“ tion of writs and precepts  
“ for electing of members to  
“ serve in parliament, as well  
“ the freeholders and others

“ in their right of election, as  
“ also the persons by them  
“ elected to be their repre-  
“ sentatives, have heretofore  
“ been greatly injured and  
“ abused;” “ Now, for re-  
“ medying the same, and pre-  
“ venting the like for the fu-  
“ ture, be it enacted by the  
“ king’s most excellent ma-  
“ jesty, by and with the ad-  
“ vice and consent of the  
“ lords spiritual and tempo-  
“ ral, and commons in this  
“ present parliament assem-  
“ bled, and by the authority  
“ of the same, That when any  
“ new parliament shall at any  
“ time hereafter be summoned  
“ or called, there shall be  
“ forty days between the *teste*  
“ and returns of the writs of  
“ summons; and that the lord  
“ chancellor, lord keeper, or  
“ lords commissioners of the  
“ great seal for the time be-  
“ ing, shall issue out the writs  
“ for election of members to  
“ serve in the same parlia-  
“ ment, with as much expedi-  
“ tion as the same may be  
“ done; and that, as well  
“ upon the calling or sum-  
“ moning any new parlia-  
“ ment, as also in case of any  
“ vacancy during this present  
“ or any future parliament,  
“ the several writs shall be  
“ delivered to the proper offi-  
“ cer to whom the execution



## Sect. 1.

great seal with  
all expedition.

issued from the great seal with as much expedition as the same may be done.

Writs, how  
made out and  
directed.

The writs are made out by the clerk of the petty bag in chancery, and directed respectively to the sheriffs of counties, and of cities, towns,

“ thereof doth belong or ap-  
“ pertain, and to no other  
“ person whatsoever; and that  
“ every such officer, upon the  
“ receipt of the same writ,  
“ shall, upon the back there-  
“ of, indorse the day he re-  
“ ceived the same, and shall  
“ forthwith, upon receipt of  
“ the writ, make out the pre-  
“ cept or precepts to each  
“ borough, town corporate,  
“ port or place within his  
“ jurisdiction, where any mem-  
“ ber or members are to be  
“ elected to serve in such new  
“ parliament, or to supply  
“ any vacancy during the pre-  
“ sent or any future parlia-  
“ ment, and within three days  
“ after the receipt of the said  
“ writ of election, shall by  
“ himself, or proper agent,  
“ deliver, or cause to be de-  
“ livered, such precept or pre-  
“ cepts to the proper officer  
“ of every such borough,  
“ town corporate, port or place  
“ within his jurisdiction, to  
“ whom the execution of such  
“ precept doth belong or ap-  
“ pertain, and to no other  
“ person whatsoever; and  
“ every such officer, upon the  
“ back of the same precept,  
“ shall indorse the day of his

“ receipt thereof, in the pre-  
“ sence of the party from  
“ whom he received such pre-  
“ cept, and shall forthwith  
“ cause public notice to be  
“ given of the time and place  
“ of election, and shall pro-  
“ ceed to election thereupon,  
“ within the space of eight  
“ days next after his receipt  
“ of the same precept, and  
“ give four days notice at  
“ least of the day appointed  
“ for the election.”

§ 2. “ And be it further en-  
“ acted, by the authority  
“ aforesaid, That neither the  
“ sheriff, nor his under-sheriff,  
“ in any county or city, nor  
“ the mayor, bailiff, con-  
“ stable, port-reeve, or other  
“ officer or officers of any  
“ borough, town corporate,  
“ port or place, to whom the  
“ execution of any writ or  
“ precept for electing mem-  
“ bers to serve in parliament  
“ doth belong or appertain,  
“ shall give, pay, receive, or  
“ take any fee, reward, or  
“ gratuity whatsoever, for the  
“ making out receipt, de-  
“ livery, return, or execu-  
“ tion of any such writ or pre-  
“ cept.”



or boroughs, which are counties of themselves (a); to the “chancellor of the county palatine of *Lancaster*, or to his lieutenant or deputy there;” to the “chamberlain of the county palatine of *Chester*, his lieutenant or deputy (b);” to the “bishop of *Durham*, or to his chancellor in temporalities of the county palatine of *Durham* (c);” to the “constable of the castle of *Dover*, and warden of the *cinque ports*, or to his lieutenant or deputy there.”

Between the issuing and return of the writs of summons upon any new parliament, there are to be at least forty days, both by the *magna carta* of king John (d), and subse-

There must be forty days at least between the issuing writs upon a new parliament and the return.

(a) The cities in *England*, being counties in themselves, having two sheriffs, are *Bristol*, *Coventry*, *Lincoln*, *London*, *Gloucester*, *Norwich*, and *York*, also *Chester*. Those which have one sheriff are *Canterbury*, *Exeter*, *Litchfield*, and *Worcester*.

The towns in *England*, which are counties in themselves, are *Kingston upon Hull*, *Newcastle upon Tyne*, *Nottingham*, *Poole*, and *Southampton*, of which each has one sheriff, except *Nottingham*, which has two.

See the stat. 3 Geo. 1. c. 15. where the counties are enumerated in the schedule.

In *Wales*, *Caermarthen* is a borough, being a county in itself, and has two sheriffs; and *Haverfordwest* is a town, being a county, and has one sheriff.

(b) This is in conformity to the 34 & 35 Hen. 8. c. 13. See *App.* xlv.

(c) This is in conformity to the 25 Car. 2. c. 9. See *App.* liii.

(d) *De sentagiis assidendis submoneri faciemus archiepiscopos, abbates, comites, et majores barones regni singillatim per literas nostras et præterea faciemus submoneri in generali, per vice-comites et ballivos nostros, omnes alios quoniam*



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(For this statute, see ante, 346.)

quently by the above statute of 7 & 8 Will.3. c. 25. § 1.

SECTION 2. *Of the issuing writs upon vacancies, during a parliament, and when returnable.*

On vacancy during the sitting of the house, new writ issues on motion.

WHENEVER a vacancy happens by death or otherwise, and the same is notified to the house by the motion of any member thereof, the speaker issues his order to the clerk of the crown, for making out a new writ (a).

<sup>1</sup> Journ. *passim*.

This, as now, was originally the course during the actual sitting of the house.

On vacancy during prorogation, writ formerly issued from the great seal.

But formerly, upon a vacancy during a prorogation, it was usual to make application to the lord chancellor, who thereupon directed a new writ.

This continued to be the practice until the twenty-third year of the reign of Elizabeth,

*capite tenent de nobis, ad certum diem scilicet ad terminum quadraginta dierum ad minus, &c.* Mat. Paris, 257. A. D. 1215. The time for this in-

terval is now by practice fifty days. 2 Hats. 235.

(a) For the form of a writ upon vacancy, see App. ix.



when new writs having, in many instances, been so obtained upon insufficient grounds, as upon unfounded representations that members were dead, or incurably sick (in which latter case it was formerly not unusual to issue a new writ), great inconvenience ensued; inasmuch as it frequently happened, that after an election had taken place, and a new member was returned, the person whose place he was to supply, also made his appearance in parliament.

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D'Ewes, 281.  
308.

This subject was much agitated in the house, on the 18th March, 1580, and a resolution was made:

“ That during the time of sitting of this court, there do not any time any writ go out for the choosing or returning of any knight, citizen, burgess, or baron, without the warrant of this house first directed for the same, to the clerk of the crown, according to the ancient jurisdiction and authority of this house in that behalf accustomed and used.”

D'Ewes, 308.  
Resolution of  
the house, that  
during the sit-  
ting of parlia-  
ment no writ  
for election to  
issue, except  
upon warrant  
from the house.

The language of this resolution seems rather to be confined to the time during which the house was actually sitting, notwithstanding that under such construction, it would not



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reach the inconveniences the consideration of which gave occasion to the passing it.

However, from the then temper of the commons, it may be, that its tenor was not unintentionally equivocal: at that time they began to be alive to the importance of their privileges, but had not yet learned boldly to assert them.

Subsequently to this order, the chancellor continued, for a considerable time, to issue writs as before; and in the case of sir *Francis Goodwin*, 22d March, 1603, he went so far as to issue a new writ, upon the return of a person supposed to be ineligible. The house, in that instance, made a very memorable struggle, but ultimately conceded the point.

After some little interval, the commons decidedly insisted upon, and maintained their privilege, upon this head; and treated the right as enuring at all times during the *existence* of a parliament.

1 Journ. 921.

In the case of *Hertford*, 22d and 23d January, 1628, they ordered the writ which had been issued by the lord keeper during a prorogation, to be brought into the house and superseded.

1 Journ. 149 to 168.  
Glanv. Pref. lxxiii. et seq.



And again, after the Restoration (on the 6th February, 1672), the house went into the debate of the matter of issuing writs, and making elections and returns of persons to serve in parliament, without order or warrant from the house; and several cases and precedents being cited, and the matter at large debated, and the general sense and opinion of the house being, "That during the continuance of the high court of parliament, the right and power of issuing writs for electing members to serve in this house, in such places as are vacant, is in this house," &c. it was resolved, That all elections upon the writs issued since the last session, were void; and that the speaker should issue out warrants to the clerk of the crown, to make out new writs for those places.

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9 Journ. 248.

Power of issuing writs on vacancies is in the house of commons alone,

whether they be actually sitting or not.

The law having been thus settled, all writs for election upon vacancies emanate from the house of commons; and under that authority, communicated by warrant from the speaker, are made out by the clerk of the crown in chancery (*a*).

Inconvenience being felt from the circumstance, that when vacancies happened during a recess of parliament, the new writs could not be issued until the meeting of the house, provisions were made by the statutes 10 Geo. 3.

(*a*) For a form of such warrant, see *Appendix*, viii.



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c. 41, and 15 Geo. 3. c. 36, to enable the speaker to make out new writs in the room of members dying, or becoming peers, during such recess.

These provisions, for the purpose of reducing them into one act, and extending them, were repealed, by the stat. 24 Geo. 3. c. 26. (a).

(a) The stat. 24 Geo. 3. c. 26. *"An act to repeal so much of two acts, made in the 10th and 15th years of the reign of his present majesty, as authorizes the speaker of the house of commons to issue his warrant to the clerk of the crown for making out writs for the election of members to serve in parliament, in the manner therein mentioned; and for substituting other provisions for the like purposes."*

*"Whereas by an act, made in the tenth year of the reign of his present majesty, intituled, An act to enable the speaker of the house of commons to issue his warrants to make out new writs for the choice of members to serve in parliament, in the room of such members as shall die during the recess of parliament; and also by another act, passed in the 15th year of the reign of his present majesty, for explaining and amending the said act, and for enabling the speaker of the house of commons to make out new writs*

*for the choice of members to serve in parliament, in the room of such members as shall, during the recess of parliament, become peers of Great Britain, and be summoned to parliament, and for other the purposes therein mentioned; several provisions were made for enabling the speaker of the house of commons to issue his warrants to the clerk of the crown to make out new writs for electing members of the house of commons in the room of such members as should happen to die, or become peers of Great Britain, at the times, in the manner, and under the restrictions in the said several acts mentioned; and whereas the said acts have been found highly advantageous to the public, by causing speedy elections of members of the house of commons, and it is therefore expedient, that the provisions therein contained should be further extended, and freed from certain of the restrictions in the said*



That statute, by § 1, reciting these statutes of the 10 and 24 Geo. 3. and that they had been found highly advantageous to the public, by causing speedy elections of members of the house of commons; and the expediency that the provisions therein contained should be further extended, and freed from certain of the restrictions in those acts specified; and that further provisions should be made for carrying the said powers into execution, in the cases of the death of the speaker, or of his seat becoming vacant, or of his absence out of the realm, and that it would be convenient that the provisions contained in those two acts should be reduced

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>“acts particularly specified,<br/>“and also that some further<br/>“provisions should be made<br/>“for carrying the said powers<br/>“into execution, in the cases<br/>“of the death of the speaker<br/>“of the house of commons<br/>“for the time being, or of his<br/>“seat in parliament becoming<br/>“vacant, or of his absence/<br/>“out of the realm; and it<br/>“would be also convenient<br/>“that the provisions contain-<br/>“ed in the said two several<br/>“acts of parliament, and of<br/>“this act, should be reduced<br/>“into one act of parliament,<br/>“and that, for that purpose,<br/>“those provisions contained<br/>“in the said two several acts<br/>“should here be repealed:” “Be<br/>“it therefore enacted by the</p> | <p>“king’s most excellent ma-<br/>“jesty, by and with the ad-<br/>“vice and consent of the lords<br/>“spiritual and temporal, and<br/>“commons in this present<br/>“parliament assembled, and<br/>“by the authority of the<br/>“same, That, from and after<br/>“the passing of this act, the<br/>“said act, passed in the 10th<br/>“year of the reign of his pre-<br/>“sent majesty, and also so<br/>“much of the said act, passed<br/>“in the 15th year of the reign<br/>“of his present majesty, as<br/>“enables the speaker of the<br/>“house of commons to issue<br/>“his warrants to make out<br/>“new writs for the election of<br/>“members to serve in parlia-<br/>“ment, shall be, and the<br/>“same are hereby repealed.”</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



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into one act, and that for that purpose, those provisions contained in the said two acts should be repealed; repeals the former of the two acts, and so much of the latter as enabled the speaker to issue his warrants to make out new writs for the election of members to serve in parliament.

Speaker during any recess to issue his warrant to the clerk of the crown to make out a new writ for election, in the room of a member dying, or becoming a peer of Great Britain.

The same act, by § 2, empowers and requires the speaker, during any recess of the house, whether by prorogation or adjournment, to issue his warrant to the clerk of the crown, to make out a new writ for electing a member of the house of commons, in the room of any member dying, or becoming a peer of *Great Britain*, either during such recess, or previous thereto,

§ 2. " And be it enacted, " That, from and after the " passing of this act, it shall " and may be lawful for the " speaker of the house of " commons for the time being, during any recess of " the said house, whether " by prorogation or adjournment, and he is hereby required to issue his warrant " to the clerk of the crown, " to make out a new writ for " electing a member of the " house of commons in the " room of any member of the " said house who shall happen to die, or who shall become a peer of *Great Britain*, either during the said " recess, or previous thereto, " as soon as he shall receive " notice, by a certificate, under the hands of two members of the house of commons, of the death of such " member, in the first case; " and in the second case, that " a writ of summons hath " been issued, under the great " seal of *Great Britain*, to " summon such peer to parliament; which certificate " may be in the form, or to " the effect, comprized in " the schedule hereunto annexed."



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as soon as he shall receive notice, by a certificate under the hands of two members of the house of commons, of the death of such member; or that a writ of summons has been issued, under the great seal of *Great Britain*, to summon such peer to parliament; the certificate to be in the form or effect, comprized in the schedule to that act.

Upon receipt of notice of the vacancy, by certificate under the hands of two members.

(For the form of such certificate, see *Appendix*, ix.)

§ 3. Directs the speaker, after receiving such certificate, to cause notice thereof to be inserted in the *London Gazette*, and not to issue his warrant until after the insertion of such notice.

Notice of receipt of certificate to be gazetted.

By § 4, the speaker is not to issue such warrant, unless the return of the writ (by virtue of

Speaker not to issue warrant unless the re-

§ 3. " Provided always, and  
" be it enacted, That the  
" speaker of the house of  
" commons shall forthwith,  
" after his receiving such cer-  
" tificate, cause notice there-  
" of to be inserted in the  
" *London Gazette*, and shall  
" not issue his warrant until  
" fourteen days after the in-  
" sertion of such notice in the  
" *Gazette*."

§ 4. " Provided also, That  
" nothing herein contained  
" shall extend to enable the  
" speaker of the house of

" commons to issue his war-  
" rant for the purposes afore-  
" said, unless the return of  
" the writ (by virtue of which  
" such member deceased, or  
" become a peer of *Great Bri-*  
" *tain*, was elected) shall  
" have been brought into the  
" office of the clerk of the  
" crown, fifteen days at the  
" least before the end of the  
" last sitting of the house of  
" commons immediately pre-  
" ceding the time when such  
" application shall be made  
" to the speaker of the house



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turn of writ  
(by which the  
member creat-  
ing the vacan-  
cy was elected)  
have been  
brought into  
the office of the  
clerk of the  
crown fifteen  
days before the  
last sitting of  
the house pre-  
ceding the ap-  
plication for  
the warrant,  
nor unless it be  
made so long  
before the next  
meeting of the  
house for the  
dispatch of bu-  
siness, as that  
the writ for  
election may  
be issued be-  
fore such meet-  
ing.  
Nor where a  
petition was  
depending  
against the re-  
turn,

which the member deceased, or becoming a peer, was elected) shall have been brought into the office of the clerk of the crown, fifteen days at the least before the end of the last sitting of the house, immediately preceding the time when such application shall be made to the speaker to issue such warrant; nor unless such application shall be made so long before the then next meeting of the house, for the dispatch of business, as that the writ for the election may be issued before the day of such next meeting; nor in case such application shall be made with respect to any seat vacated, in either of the methods before mentioned, by any member against whose election, or return, a petition was depending, at the time of the then last prorogation or adjournment of the house (a).

(a) If the return of the member vacating be petitioned against, and the petition be pending at the time of the vacancy, no writ can issue; for if it should turn out that such

member was not duly elected, then his death has occasioned no vacancy. *Shrewsbury*, 22d November, 1744. 1 Doug. 462.

“ of commons to issue such  
“ warrant as aforesaid, nor  
“ unless such application shall  
“ be made so long before the  
“ then next meeting of the  
“ house of commons for the  
“ dispatch of business, as that  
“ the writ for the election may  
“ be issued before the day of

“ such next meeting of the  
“ house of commons; nor in  
“ case such application shall  
“ be made with respect to any  
“ seat in the house of com-  
“ mons which shall have been  
“ vacated in either of the me-  
“ thods before-mentioned, by  
“ any member of that house



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By § 5, to prevent any impediment to the execution of the act, by the death of the speaker, or by his seat becoming vacant, or by his absence out of the realm; the then speaker was empowered and required, within a convenient time after the passing of the act, and so every future speaker, within a convenient time after he shall be in that office, at the beginning of any parliament, by any instrument in writing, under his hand and seal, to nominate and appoint a certain number of members of the house of

Speaker, by instrument under his hand and seal, to appoint members not more than seven, nor less than three, authorizing them, or any one, to execute powers given to him for issuing warrants.

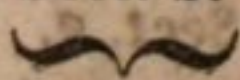
“against whose election or  
“return to serve in parlia-  
“ment a petition was de-  
“pending, at the time of the  
“then last prorogation of  
“parliament, or adjournment  
“of the house of commons.”

§ 5. “And whereas the  
“due execution of this act  
“may be prevented or im-  
“peded by the death of the  
“speaker of the house of  
“commons for the time be-  
“ing, or by his seat in par-  
“liament becoming vacant,  
“or by his absence out of the  
“realm, for which inconve-  
“nienices it is expedient to  
“provide a remedy; be it  
“therefore enacted, by the  
“authority aforesaid, That it  
“shall and may be lawful for  
“the present speaker of the  
“house of commons, and he  
“is hereby required, within  
“a convenient time after the

“passing of this act, and for  
“every future speaker of the  
“house of commons, and he  
“is hereby required, within  
“a convenient time after he  
“shall be in that office, at the  
“beginning of any parlia-  
“ment, by any instrument in  
“writing under his hand and  
“seal, to nominate and ap-  
“point a certain number of  
“persons, not more than  
“seven, nor less than three,  
“members of the house of  
“commons at the time being,  
“thereby authorizing them,  
“or any one of them, to exe-  
“cute all and singular the  
“powers given to the speaker  
“of the house of commons  
“for the time being, for issu-  
“ing such warrants as afore-  
“said, by virtue of this act,  
“subject nevertheless to such  
“regulations and exceptions  
“as are herein also contained;



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Authority to  
enure, notwith-  
standing death  
of speaker, or  
his vacating his  
seat.

When the num-  
ber of persons  
so appointed is  
reduced to less  
than three, new  
appointment  
to be made.

Appointment  
to be entered  
in the Journals,

commons, not more than seven, nor less than three, authorizing them, or any one of them, to execute the powers given to the speaker for the time being, for issuing such warrants, subject to the regulations and exceptions in the act; which instrument is, notwithstanding the death of such speaker, or the vacating his seat in parliament, to be in force until the dissolution of the parliament in which it is made.

By § 6, as often as the number of persons so to be appointed, shall, by death, or by their seats in parliament being vacated, be reduced to less than three, a new appointment may be made in the same manner.

By § 7, every such appointment is to be entered in the Journals, and to be published once

“ which instrument of ap- “ the said number of persons,  
“ pointment and authority “ so to be appointed as afore-  
“ shall, notwithstanding the “ said, shall, by death, or by  
“ death of the speaker of the “ their seats in parliament  
“ house of commons making “ being vacated, happen to  
“ and executing the same, or “ be reduced to less than  
“ the vacating his seat in par- “ three, it shall and may be  
“ liament, continue and re- “ lawful for the speaker of the  
“ main in full force until the “ house of commons for the  
“ dissolution of the parlia- “ time being, to make a new  
“ ment in which it shall be “ appointment in the manner  
“ made.” “ hereinbefore directed.”

§ 6. “ Provided always, “ § 7. “ Provided also, That  
“ and be it enacted, That “ every such appointment  
“ whenever and as often as “ shall be entered in the jour-



in the *London Gazette*; the instrument is to be preserved by the clerk of the house, and a duplicate is to be filed in the office of the clerk of the crown in chancery.

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and published in the *Gazette*; instrument to be preserved by clerk of the house, and duplicate filed in office of clerk of the crown. Such authority limited to cases where no speaker, or he is absent out of the realm; and to the time during which the person appointed continues a member.

By § 8, the act is not to extend, or be construed to extend, to give any power or authority to any person so to be nominated and appointed, except in the case of there being no speaker, or of his absence out of the realm; nor for any longer time than the person so to be appointed shall continue a member of the house.

By § 9, the publisher of the *Gazette*, when any such notice of issuing any such warrant

Publisher of *Gazette*, when notice of issuing warrant

“ nals of the house of commons, and be also published  
“ once in the *London Gazette*;  
“ and the instrument of such  
“ appointment shall be preserved by the clerk of the  
“ house of commons, and a  
“ duplicate thereof shall be  
“ filed in the office of the clerk  
“ of the crown in chancery.”

§ 8. “ Provided also, That  
“ nothing in this act contained  
“ shall extend, or be construed to extend, to give  
“ any power or authority  
“ whatsoever to any person  
“ so to be nominated and appointed as aforesaid, except

“ in the case of there being  
“ no speaker of the house of  
“ commons, or of his being  
“ absent out of the realm,  
“ nor for any longer time than  
“ such person, so to be appointed as aforesaid, shall  
“ continue a member of the  
“ house of commons; any  
“ thing herein contained to  
“ the contrary notwithstanding.”

§ 9. “ And be it enacted,  
“ That the publisher of the  
“ *Gazette* for the time being,  
“ when any such notice as  
“ aforesaid of the issuing of  
“ any such warrant shall be



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brought to him,  
to give a re-  
ceipt.

If more than  
one brought to  
him, only to  
insert that first  
brought.

Act only ope-  
rative in cases  
of vacancy,  
from death, or  
accession to  
peerage.

Writs on va-  
cancy, when  
returnable.

shall be brought to him, signed by any person so appointed, is to give a receipt for the same, specifying the day and hour when it was received; and in case more than one such notice shall be brought to him relative to the same election, he is to insert in the *Gazette* only the notice first received.

The provisions of this act do not operate except upon vacancies upon death of members, or their becoming peers. The issuing writs upon vacating a seat upon any other ground, does not take place, except upon motion made in the house.

There is no precise interval fixed by law between the issuing and return of writs issued on vacancies; nor any day mentioned in the writ, whereupon the member to be returned is to attend in parliament.

“brought to him, signed by  
“any person so appointed as  
“aforesaid, shall give a re-  
“ceipt for the same, specify-  
“ing the day and hour when  
“the same was received; and  
“in case more than one such  
“notice shall be brought to  
“him, relative to the same

“election, such publisher  
“shall insert in the *Gazette*  
“only the notice first re-  
“ceived.”

(Then follows the schedule,  
being the certificate referred  
to in § 2, for which see *Ap-  
pendix, ix.*)



SECTION 3. *Of the controul of the house over the writ.*

A RESPONSIBILITY to the house of commons, in respect of the writ, attaches immediately after it has issued from the great seal, upon the summoning a new parliament; and, in cases of vacancy, the jurisdiction of the house begins, as has been seen, in an earlier stage, namely, from the time of the vacancy.

Jurisdiction  
of the house in  
respect of the  
writ.

In the exercise of this jurisdiction the house will not only inquire as to the due execution of the writ, but will interfere, if they be sitting, and it become necessary, in any intermediate stage of its progress, making such discretionary order as circumstances may require. (See *ante*, 319.)

In some instances, before the issuing a new writ, it has with-held its order for that purpose; in others, after the writ has issued, it has caused it to be staid for a time; and again, in others, it has caused it to be wholly superseded.

The former course has been pursued, where it has been expedient, for some purpose, to delay the election for a time, as where the malpractices at the last election had been such, as



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to call for the longer deliberation of the house, or the interference of the legislature.

35 Journ. 418.  
771.  
(See also stat.  
15 G. 3. c. 36.  
§ 4.)

Writ postponed, pending a bill in parliament respecting elections at the place.

The new writs were withholden in the cases of *Hindon* and *Shaftsbury*, 12th November, 1775, where, on account of the corruption which had before prevailed, it was proposed to pass acts to prevent such mischiefs in future. Nor were they issued until the 8th May, upon the projected bills being thrown out.

58 Journ. 263.  
1 Peck. 86.

Writ postponed until the passing of an act of parliament, to preserve the peace, and secure the freedom of election at the place.

*Nottingham*, 1803. The election was holden void, on account of riots; and the committee (a) came to a resolution, alluding to the exclusive jurisdiction of the corporation, and

(a) The committee resolved, that "it appearing that the mayor and aldermen have, by charter, an exclusive jurisdiction within the town and county of the town of *Nottingham*, and the committee thinking it highly expedient to provide some better security than is likely to be provided by the corporation of *Nottingham*, to preserve the peace within the town and county of thereof, and to prevent the repetition of the same disgraceful scenes:

"That it is the opinion of this committee that the house be moved for leave to bring in a bill to give the magistrates of the county of *Nottingham*

concurrent jurisdiction with the magistrates of the town and county of the town of *Nottingham*:

"That it is the opinion of this committee, that unless such, or some other measure to the like effect, be taken previously to the next election for the town and county of *Nottingham*, there is no reasonable hope that a free election can be had."

The act which passed hereupon is, the 43 Geo. 3. c. 45.

"An act for the more effectually preserving the peace and securing the freedom of election in the town of *Nottingham*, and county of the said town."



stating the expediency of providing some better security than was likely to be provided by them for the preservation of peace, and to prevent the repetition of such disgraceful scenes; and recommending the introduction of a bill to give the magistrates of the county concurrent jurisdiction with the magistrates of the town and county; and that unless such, or some other measure to the like effect, were taken, there was no reasonable hope that a free election could be had.

The house hereupon delayed the issuing of the new writ, until such bill had passed.

The house, upon the 20th April, 1803, upon 58 Journ. 342. taking into consideration the report of the committee, ordered, that leave should be given to bring in a bill for the purposes suggested in that report, and at the same time ordered, that the speaker should not issue his warrant for the making out a new writ, before a certain day (11th May); and this time was afterwards enlarged till a further day (19th May), so as to give a sufficient time for the bill to pass. 58 Journ. 400.

The bill received the royal assent on, the 58 Journ. 419. 17th May, whereupon the new writ was ordered 433. on the 20th.



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Where a difficulty or doubt has arisen with respect to a writ which has issued, the house has arrested its progress, until they had considered what should be their final determination; or until the doubt in question had been removed.

1 Journ. 921.  
(*Ante*, 352, and  
*infra*.)  
Writ, stayed  
by the house,  
a question  
pending as to  
its legality.

In the case of *Hertford*, 22d and 23d January, 1628, before mentioned, where the legality of the issuing of the writ was agitated, the clerk of the crown, who had already delivered it, was ordered to bring it into the house; and, upon so doing, he was ordered to keep it in his custody, till the further pleasure of the house should be known.

(See *infra*.)

30 Journ. 386.  
391.  
Writ stayed by  
the house, upon  
an uncertainty  
as to the va-  
cancy of the  
seat.

In the case of *Devizes*, 30th April, 1765, after the writ had been ordered, there appeared to be an uncertainty, whether the seat was vacant or not. The house ordered, that the messenger of the great seal, in whose hands the writ then was, should forbear the delivery of it, until the further order of the house.

(See *post*, 368.)

1 Journ. 921.  
927.  
(*Ante*, 352.)  
Writ illegally  
issued, super-  
seded.

The house has caused the writ to be superseded, in cases where it has irregularly issued, as in that of *Hertford*, just mentioned, and the cases adverted to in the preceding section,



where the writs were issued by the lord keeper during a prorogation.

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So, where it has not been directed to the proper person, as in the case of *Tamworth*, 1st December, 1702, where the writ had been issued only to the sheriff of *Stafford*, whereas the borough is also within the county of *Warwick*; the house ordered such writ to be superseded, and writs to be made out both to the sheriff of the county of *Warwick*, and the sheriff of the county of *Stafford*.

14 Journ. 63.

Writ issued to only one of the two persons, to whom it ought to have been issued, superseded.

The same course has been adopted, where the time for carrying into effect the writ has elapsed, before the proper steps for so doing could be taken.

*Gloucester*, 19th December, 1702. Where the speaker acquainted the house, that he had received a letter from one of the sheriffs, that the other had died the same day he received the new writ, and that, by reason thereof, and before a new sheriff was chosen, the county court passed without executing the writ(a); and desiring the direction of the house for his

14 Journ. 88.

Writ superseded, where, from the death of one of two returning officers, the time for the proclamation elapsed without its being made.

(a) See the writ, *Appendix*, required to be made at the vi. whereby proclamation is next county court.



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proceedings. The house ordered the writ to be superseded, and a new writ to be issued.

30 Journ. 386.

391.

Writ issued prematurely, superseded.

In the case of *Devizes*, 30th April, and 6th May, 1765, where, as before stated, a new writ had been ordered, and it had been stayed, as before mentioned, upon the uncertainty whether Mr. *Willy*, in whose room it had been moved for, were dead or not; the house, upon being informed, that he was alive at the time of ordering the writ, ordered that it should be superseded.

30 Journ. 404.

(See also some cases in sect. 4. where similar orders were made.)

Norfolk, 1586.

Glanv. Pref.

lii.

Rutlandshire, 1601.

Ib. lxiii. lxvii.

Bucks, 1604.

Ib. lxxiii.

When a writ is once issued, its course is not to be arrested or diverted, except by the authority of the house; nor, unless by their order, can a new writ issue, although the proceedings under a former be confessedly void.

4 Inst. 10. 48.

(Sed vide ante, 77.)

Even the house of commons cannot authorize any alteration in the writ. Lord *Coke* says: this can only be done by act of parliament.



SECTION 4. *Of the delivery of writ, and of the indorsement to be made thereupon.*

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THE writ having passed the great seal, is, in conformity to the requisition of the several orders of the house (*a*), as well as to that of the statute 7 & 8 Will. 3. c. 25. § 1, to be delivered in the proper quarter.

(For this statute, see ante, 347.)

By the above statute, as well upon the calling or summoning any new parliament, as in case of any vacancy during a parliament, the several writs are to be delivered to the proper officer, to whom the execution belongs or appertains, and to no other person whatsoever.—Neither, however, did the orders of the house, nor did the statute of William, give any definite directory rule, for carrying into effect such requisition; either as to the mode whereby it was to be accomplished, or as to any particular time, within which it was to take place.

Writs to be delivered to the proper officer.

No precise regulations as to mode or time of delivery of writ.

(*a*) The orders of the house were severally in substance what has been since enacted, with respect to the delivery of the writ, by the stat. 7 & 8 W. 3. except that in one of them, viz. that of 25th January, 1664, “if the proper officer for executing the writs were not in town, they were to be delivered to one of the knights that served for the county into which the writ should issue.” 8 Journ. 588. (See

the several orders 22d Nov. 1661, 8 Journ. 317; 18th Feb. 1662, 8 Journ. 436; 25th Jan. 1664, 8 Journ. 588; 13th April, 1675, 9 Journ. 316; 21st Oct. 1678, 9 Journ. 517; 7th Dec. 1694, 11 Journ. 184.) These orders generally had their foundation in some particular complaint, but as they are all previous to the 7 & 8 W. 3. c. 25. it is unnecessary to detail them.



## Sect. 4.

Formerly the clerk of the crown responsible for the delivery of the writ; afterwards the messenger, attending the great seal.

The officer who was formerly considered by the house of commons, as responsible for the due delivery of the writ, was the clerk of the crown (*a*); but for about a century, before the passing of the recent act of parliament of the 53 Geo. 3. c. 89. this delivery was left to the discretion of the messenger attending the great seal. And, in the event of any miscarriage or delay of the writ, in its progress from chancery to the proper officer, he was the person looked to, and called upon to exonerate himself in the first instance.

It was not possible that at a general election the messenger could in person convey all the writs into the several counties; he was therefore under the necessity of transmitting them by other hands. And although there was not the same reason for it, the practice was the same with respect to writs upon vacancies.

(*a*) October 31, 1678. The clerk of the crown being called on to give an account to the house touching the writs for electing new members, acquainted the house that he had delivered them to Mr. *Harris*, the servant of the lord chancellor, to be sealed, and that he shewed him the order of the house (of the 21st October, 1678, 9 Journ. 517, whereby the clerk of the crown was to take care that the writs for the new election should be delivered to the hands of the high sheriffs of the respective counties), and demanded of him to have the writs again when they were sealed; and that Mr. *Harris* told him that the lord chancellor would take care to see the writs delivered. A committee was thereupon appointed to inquire into the delays of issuing forth and sending down the writs. 9 Journ. 524. But it does not appear that they made any report.



Until the statutory regulation which is about to be mentioned, there was no particular person designated by law as the medium of delivery, in either case. Although it appears, that it was formerly usual for the clerk of the crown to deliver the writ to the person producing the warrant requiring it to be made out (*a*), no such practice had latterly prevailed; and it was in the discretion of the messenger to decide, to whom he would entrust it in each individual case.

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Discretionary in the messenger to select persons to deliver writs to the proper officers.

As to who might be proper to be so entrusted, there could be no general rule; but in cases where complaints have arisen with respect to the delivery of the writ, it appears that the chief inquiry of the house has been directed to the propriety of the selection made for this purpose. Each case hereupon depended upon its own peculiar circumstances; but from what has occurred under such inquiries it was to be inferred, that in this respect one measure must always have been questionable, namely, the placing the writ in the hands of a candidate (*b*); although the so doing would not perhaps, in all cases, have been necessarily deemed unjustifiable and improper.

In complaints respecting delivery of writs, first inquiry as to persons employed.

(*a*) See the cases of *Ludgershall*, 12th July, 1660, 8 Journ. 88. *Brecon county*, 22d Nov. 1661, 8 Journ. 317.

(*b*) The language of the resolutions of the house in the following cases of *Westmoreland*, (*post.* 372.) and *Minehead*, (*Ib.*) would bear an unqualified import to that effect; but in the later cases of *Monmouthshire* (*post.* 374.) and *Honiton*, (*post.* 375.) wherein the same thing



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It might also have been questionable how far a candidate, in receiving the writ, might or might not, on that account, have been liable to

seems to have been done, the house came to no resolution against any person who had been accessory to it.

*Westmoreland*, 11th and 12th December, 1704. Upon a complaint of indirect practices in sending down the writ, the clerk of the crown, and the messenger, were ordered to attend; and, upon examination of the latter, it appearing that the person to whom he had given the writ to convey it to the sheriff, had delivered it to a candidate (whether with or without the privity of the messenger does not appear), the house resolved, "That Mr. *Robert Briscoe*, the messenger, was guilty of a crime, in suffering the writ, &c. to come into the hands of a candidate, before it came to the proper officers;" and he was ordered into the custody of the serjeant at arms, wherein he remained till the 16th Dec. when he was reprimanded and discharged. 14 Journ. 453, 454. 460.

*Minehead*, 16th, 18th, 21st Dec. 1720, and 11th Jan. 1721. Complaint being made to the house, that although the writ had issued long since, yet the same had not been delivered to the sheriff, the matter was examined into by the house; and it appearing that the person to whom the messenger had delivered

the writ, on the 30th November, had passed it over, on the next day, to one *John Fox*, he was ordered to attend; and the house, upon his examination, resolved, "That *John Fox*, being employed to carry the writ to the high sheriff of the county of *Somerset*, had been guilty of a breach of trust, in delivering the same to a candidate." He was then ordered into the custody of the serjeant at arms. On the 3d Feb. 1721, he was reprimanded and discharged. 19 Journ. 695. 697. 702. 709. 735.

In the same case, on the 18th Jan. a question, "That *John Wills*, esq. was guilty of a crime, in having caused the writ, &c. to be delivered to a candidate," passed in the negative; but whether the fact was established against him or not, or upon what other grounds the house came to this resolution, is not evident. 19 Journ. 717.

In the *Monmouthshire* case 1772, (see post. 375.) Mr. *Morris*, against whom there was a resolution in consequence of his having delayed the writ, although he is not stated so to have been, was a candidate. The house, however, notwithstanding that the language of their resolution was very strong, do not notice that circumstance.



censure (*a*); at all events, if by so doing he should have occasioned any undue delay, he would have acted at great peril to himself.

The irregularities which were practised in various cases, produced repeated inquiries with respect to the delivery of the writs; and the house of commons has again and again had occasion to investigate the causes of miscarriage or delay in this particular.

In some of the early cases which occurred (*b*) where the writ had not reached its proper destiny at all, or not in due time, the house made no other orders than that new writs should be issued, and that those which had gone out should be superseded. Such occurrences, however, have since for the most part been regarded in a more serious light (*c*); the house not only making in each

(*a*) In the case of *Minehead* - interval between the two last just mentioned, a question, mentioned,) and which was "that Sir *Richard Lane*, knight, being a candidate at the election, &c. was guilty of a crime in receiving and detaining the writ directed to the sheriff," &c. was negatived (110 to 71.) 19 Journ. 717. How far the fact was established against him does not appear.

(*b*) *Ludgershall*, 12th July, 1660, 8 Journ. 88. *Wigan*, 3d Sept. 1660, 8 Journ. 146. (the former a case of miscarriage, the latter of delay).

(*c*) In the case of *Milborne Port*, 13th August 1660, (which occurred in the

*Tamworth*, 22d November, 1669, upon complaint of some neglect or miscarriage committed by Mr. serjeant *Flint*, a member of the house



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instance such orders as the exigency of the case required (*a*); but in many, reprobating the selection (*b*) of the person employed in the de-

in detaining in his hands the writ, whereby the election had been delayed; the house being of opinion, upon the evidence\*, “that there was a miscarriage in this matter by the said Mr. serjeant *Flint*,” the speaker, by their command, gave him a reprehension for the same; and he was excused. 9 Journ. 111.

(*a*) *Wigan*, 8th January, 1693, the house made an order with respect to that particular writ; viz. that it should without further delay be sealed the next day, and immediately sent to the chancellor of the county palatine of *Lancaster*, 11 Journ. 50.

(*b*) *King's Lynn*, 29th and 31st March 1712, upon a complaint of delay, it appeared that the writ was sealed on the 10th, and that the precept was not brought to the borough till the 26th. —The messenger stated, that by a recommendation of some gentlemen, he delivered the writ, on the 12th, to a Mr. *Cremer*, an attorney of that county, who was going down, and promised to deliver it to the sheriff on the 17th; that it was not intended to be delivered sooner,

to avoid the confusion of having the assizes and the election together. He further stated, that Mr. *Cremer* afterwards acquainted him, that both the sheriff and undersheriff were absent. He confessed that Mr. *Cremer* was not the sheriff's deputy, and that he did not take any receipt for the writ. The house having referred to the stat. 7 & 8 Will. 3. c. 25. § 1, and to a former entry on the journals relating to Mr. *Briscoe*, the messenger†, resolved that he “Mr. *Briscoe*, having received the writ, and having not delivered the same to the proper officer, was guilty of a neglect of his duty, in prejudice of the said borough, and of the right of elections.” He was thereupon ordered into the custody of the serjeant at arms. —On the 12th April following he was reprimanded and discharged. 17 Journ. 159. 164. 182.

The aforesaid case of *Minehead*, 1720 and 1721, (*ante* 372,) was also a case in which the writ had been delayed.

*Monmouthshire*, 11th, 18th, and 28th February, 1772. Upon complaint of a delay in the execution of the writ,

\* He had detained the writ for fourteen days, and had also detained another writ for nine days. *Heywood*, Co. El. 7.

† The reference is stated to

have been to the journal of the 2d December, 1704. This was a mistake, there having been no house on that day; the mistake was probably for the 11th.



livery of the writ ; and in many, animadverting (sometimes with considerable, though not un-

Mr. *Morris* was alleged to have taken it. He was in consequence ordered to attend the house. Upon his examination, he acknowledged, that the writ came to his hands on the 5th of June, and that it was not delivered to the sheriff till the 21st, but assured the house, that he did not take it by force, but that the messenger freely delivered it to him: that when he took the writ, he did not mean thereby to delay the election, but that some doubts arising as to the place of election, that he sent several expresses to *London*, for the opinion of counsel, which delayed the delivery of the writ. He added, that the delay had been very detrimental to his interest at the time of the election, and that no person was blameable for any part of this transaction, but himself and the messenger. He then expressed his sorrow, and sense of his offence, and humbly submitted himself to the house.

The house resolved, “ that *Valentine Morris*, esq. having taken the writ from the messenger, who was sent down to deliver the same to the sheriff, and having delayed the delivery thereof for fifteen days, is thereby guilty of a violation of the law, and a breach of the privilege of this house.”

But the house, noticing

that he had acknowledged his offence, and expressed his concern for it, forbore to proceed further against him. 33 Journ. 468. 488. 536.

*Honiton*, 2d, 3d, and 26th April, and 3d May, 1781. Complaint being made of a delay in sending down the writ, upon examining into the matter, it appeared that the writ had been delivered to Mr. *Bacon* by Mr. *Troward*, who had received it from the deputy messenger.

Mr. *Bacon* having been examined in his place, the house came to a resolution, “ that it appears to this house, that there was a delay in the delivery of the writ to the under-sheriff of the county of *Devon*.” 38 Journ. 331. 336. 424. 439. It does not distinctly appear whether Mr. *Bacon* was a candidate or not. A bill was hereupon ordered to be brought in to amend and explain the 7 and 8 W. 3. c. 25. (38 Journ. 439.) but none such then passed.

There have been other cases where the inquiry has fallen to the ground from the prorogation of parliament, or where the house has come to no resolution in the matter. See *Cockermouth*, 4th July, 1717, 18 Journ. 617. *Salop*, *Chester*, *Caernarvon*, *Anglesea*, *Montgomery*, and *Denbigh* (counties), 9th May, 1628, 21 Journ. 158, 159. *Cardi-*



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merited severity) upon the conduct of persons who had been wilfully instrumental in perverting its due course. And wherever in such inquiries they met with contumacy (a) in the withholding from them information, relating to such matters, it has been resented and punished.

The repetition of the practices alluded to, has  
*gan*, 21st Jan. 1729, 21 Journ. 407.

*Poole*, 16th, 17th, and 28th July, 1807. Complaint being made to the house, of a delay in the execution of the writ, it appeared, upon examination of Mr. *Stainforth*, the messenger attending the great seal, that he had received it on the 30th April, and had, on the same day, and within two hours, delivered it to a Mr. *Brundett*, from whom it passed to Mr. *Spurrier*. The entry whereupon is, "it appearing to the house that the said Mr. *Spurrier* having obtained the writ from the said Mr. *Brundett*, on the 30th day of April last, did unduly detain the same, until the 17th day of May last, before he delivered it to the sheriff;" and it was resolved, that he was thereby guilty of a breach of the privileges of the house; and he was committed to the custody of the serjeant at arms. On the 30th July, he was reprimanded and discharged. 62 Journ. 721, 722. 789. 798.

(a) In the same case on the 17th July, Mr. *Brundett*, attending according to order, was called in and examined;

"and having refused to answer a question that was put to him, he was directed to withdraw;" and it was thereupon resolved, that he "not having answered the said question, is thereby guilty of a high breach of the privileges, and a contempt of the authority of the house." And he was committed to *Newgate*, where he remained till the 21st, when he was reprimanded and discharged. 62 Journ. 735, 736. 747, 748. 754.

Mr. *Orme* mentions a case of *The King v. Barber and Wood*, H. T. 1803, where an application was made to the court of king's bench for leave to file an information against the defendants for a misdemeanor, in acting contrary to the provisions of the stat. 7 and 8 W. 3. c. 25. The defendant *Barber* was the messenger or pursuivant of the great seal, and upon the issuing of a new writ for *Gatton*, had delivered the same to the defendant, colonel *Wood*, who at the time, and as a reason for obtaining the writ, had alleged that he was proprietor of the borough. Colonel *Wood* did



more than once suggested the necessity of some further regulations. The high quality of the instrument in question, the quarter from whence it emanates, and the important office with which it is charged, demanded a more regulated mode of delivery.

With a view to this end, and in order to prevent the recurrence of irregularities, either from contrivance or accident (*a*), several bills have been at different times introduced into the house of commons (*b*); that, however, which became

not deliver the writ until after the expiration of twenty-one days. The court refused to entertain the motion as against *Barber*, the messenger, no improper motives being imputed to him; and it being admitted that colonel *Wood* was not charged in the affidavits on which the motion was made with corrupt conduct, the court considered that this was not a case which called for a criminal information, and that if it was a fit subject for prosecution, justice might effectually be done in proceeding by indictment. *Orme on Elections*, 2d edit. 3.

(*a*) *Callington*, 27th and 30th March, 1801. Complaint being made of delay in the execution of the writ, a committee was appointed to inquire into the causes of the delay, and to report thereupon. Their report stated the writ to have passed through several hands, and

that it had been sent in a parcel by the mail-coach; and that it appeared probable that it was lost on the road. Whereupon the house ordered a new writ, "it appearing that the former writ which had issued on the 13th of March had been lost." 58 Journ. 233. 241. 243. See also the case of *Kercudbright*, and of *Waterford*, *post.* 387 and 393.

(*b*) Of these bills, one (brought in the 11th May, 1728,) passed the lower house; and two others, (brought in on the 28th Feb. 1772, and the 18th Nov. 1795,) were twice read and committed. Each, however, successively fell to the ground by the prorogation of parliament. The plan proposed by these bills was that which has since been adopted.

The delivery of the writ, not only to the proper officer, but in proper time, is very



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the stat. 53 Geo. 3. c. 89 (a) was the first which passed. This statute, by § 1, requires the mes-

important, inasmuch as the time of election (as will be seen hereafter) may be considerably accelerated or retarded, by the earlier or later delivery thereof. It will easily occur, that there may be many instances wherein the interest of particular candidates may be greatly affected by the hastening or delaying the election; e. g. in the county of *Sussex*, the county court is held alternately at *Lewes* and *Chichester*, and it depends upon the accidental circumstance of the turn for holding this court, at which of these places the county election takes place. It is obvious, that the election being holden at the one, or the other, may considerably promote or impede the views of particular candidates, according to the part of the county in which their interest respectively lies.

(a) The stat. 53 Geo. 3. c. 89. "*An act for the more regular conveyance of writs for the election of members to serve in parliament.*"

[2d July, 1813.]

"For the more expeditious and regular conveyance of writs for the election of members to serve in parliament, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament

"assembled, and by the authority of the same, that when any new parliament shall at any time hereafter be summoned or called, as also in all cases of vacancy during this present or any future parliament, the messenger or pursuivant of the great seal, or his deputy, shall, after the receipt thereof, forthwith carry such of the said writs as shall be directed to the sheriffs of *London*, or sheriff of *Middlesex*, to the respective offices of such sheriffs or sheriff; and all such other writs to the general post-office in *London*, and there deliver the same to the postmaster or postmasters general for the time being, or to such other person or persons as the said postmaster or postmasters general shall depute to receive the same, (and which deputation they are hereby respectively required to make), who on receipt thereof shall give an acknowledgment in writing of such receipt to the said messenger or his deputy, from whom the same shall be received, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment, signed by the parties respectively to whom and by whom the same shall be so delivered; and the said postmaster



senger or pursuivant of the great seal, or his deputy, after receiving the writs, whether upon a new parliament, or upon vacancies during a parliament, forthwith to carry them (with some few exceptions,) to the general post-office in *London*, and there to deliver them to the postmaster, or postmasters-general for the time being, or to such other person or persons as he or they shall depute to receive the same; (which deputation is thereby required to be made): It further requires such deputy or deputies, on receipt of the

“or postmasters general, or  
 “such their deputy or deputies, shall dispatch all such  
 “writs, free from the charges  
 “of postage (which they are  
 “hereby authorized to do),  
 “by the first post or mail  
 “after the receipt thereof,  
 “under covers, respectively  
 “directed to the proper officer or officers to whom  
 “the said writs shall be respectively directed, and to  
 “no other person whomsoever, accompanied with  
 “proper directions to the  
 “postmaster, or deputy postmaster of the town or  
 “place, or nearest to the  
 “town or place where such  
 “officer or officers shall hold  
 “his or their office, requiring  
 “such postmaster or deputy  
 “postmaster forthwith to  
 “carry such writs respectively to such office, and to  
 “deliver the same there to  
 “such officer or officers to  
 “whom the same shall be  
 “respectively directed, or to  
 “his or their deputy or de-

“puties, who are hereby respectively required to give  
 “to such postmaster or deputy postmaster a memorandum in writing, under  
 “his or their hand or hands,  
 “acknowledging the receipt  
 “of every such writ, and  
 “setting forth the day and  
 “hour the same was delivered by such postmaster or deputy postmaster,  
 “which memorandum shall  
 “also be signed by such postmaster or deputy postmaster, who are hereby required to transmit the same  
 “by the first or second post afterwards, to the said postmaster or postmasters general, or their respective  
 “deputies at the said general post-office in *London*,  
 “who are hereby required  
 “to make an entry thereof,  
 “in a proper book for that  
 “purpose, and to file and  
 “keep such memorandum  
 “along with the duplicate of  
 “the said acknowledgment,  
 “signed by the said messen-

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Messenger of great seal to carry writ (except in certain cases, see *post*, 384.) to the general post-office in *London*, and to deliver it to postmaster-general, or deputy, who on receiving writ, to give an acknowledgment to person bringing it, and to keep a duplicate.



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writs, to give an acknowledgment in writing to the person from whom the same shall be received, expressing the time of such delivery, and to keep a duplicate of such acknowledgment, signed by the parties respectively, to whom and by whom the same shall be delivered.

“ ger as aforesaid, to the in-  
 “ tent that the same may be  
 “ inspected or produced up-  
 “ on all proper occasions, by  
 “ any person interested in  
 “ such elections.

“ § 2. And that the said  
 “ postmasters general may  
 “ be duly informed where  
 “ such officers to whom such  
 “ writs shall be respectively  
 “ directed, hold their re-  
 “ spective offices for the pur-  
 “ poses aforesaid ;” “ be it  
 “ further enacted by the au-  
 “ thority aforesaid, that the  
 “ chancellor of the county  
 “ palatine of *Lancaster*, the  
 “ lord bishop of *Durham*, or  
 “ his temporal chancellor of  
 “ the county palatine of *Dur-*  
 “ *ham*, the chamberlain of  
 “ the county palatine of *Ches-*  
 “ *ter*, the warden of the  
 “ cinque ports, the sheriffs  
 “ and stewarts of the several  
 “ cities, counties, and stew-  
 “ artries, and all other per-  
 “ sons to whom such writs  
 “ for the election of mem-  
 “ bers to serve in parliament  
 “ ought to be and are usu-  
 “ ally directed, or their re-  
 “ spective lieutenants or  
 “ deputies, shall, within  
 “ one month after the pass-  
 “ ing of this act, severally  
 “ send up to the said post-  
 “ masters general an account

“ of the city, town, or place  
 “ where they shall hold their  
 “ respective offices for the  
 “ purpose aforesaid, specify-  
 “ ing in such account such  
 “ particulars as shall be ne-  
 “ cessary to ascertain the  
 “ particular situation of such  
 “ respective offices, and so  
 “ from time to time, with all  
 “ convenient speed, as often  
 “ as the places for hold-  
 “ ing such offices shall be  
 “ changed; and also an ac-  
 “ count of such general post-  
 “ town or place as shall be  
 “ nearest to such offices re-  
 “ spective, in case such re-  
 “ spective offices shall not be  
 “ in any general post town  
 “ or place; and the said  
 “ postmasters general shall  
 “ make, or cause to be made,  
 “ a list of such places, and  
 “ cause the same to be hung  
 “ up and kept in some pub-  
 “ lic place in the general  
 “ post-office aforesaid.

“ § 3. Provided always,  
 “ and be it further enacted,  
 “ that in all cases where any  
 “ such sheriff or other per-  
 “ son to whom such writs  
 “ ought to be directed, shall  
 “ hold his office within the  
 “ cities of *London* or *West-*  
 “ *minster*, or the borough of  
 “ *Southwark*, or within five  
 “ miles thereof, such sheriff



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Writs to be dispatched by first post to the proper offices, with directions to postmasters for forwarding them.

The postmaster or postmasters-general, or their deputy or deputies, are, by the same clause, to dispatch all such writs, free of postage, by the first post or mail after the receipt thereof, under covers, respectively directed to the proper officer or officers to whom the same shall be directed, accompanied with proper directions to the postmaster, or deputy-postmaster of the town or place, or nearest to the town or place where such officer or officers shall hold his or their office, requiring him forthwith to carry such

“or officer shall send such  
“account as aforesaid of the  
“place where he shall hold  
“such office, to the messenger of the great seal, instead of the said postmaster general; and the said messenger, or his deputy, shall carry all such writs to such office, in like manner as is herein-before directed in the case of the sheriffs of *London and Middlesex*.

“§ 4. And whereas certain profits now arise to the messenger of the great seal, from allowances made to him under the head of mileage, for the conveyance of such writs, which allowances are paid him from the hanaper-office; be it further enacted, that such allowances shall not be taken away or any ways affected by this act, during the life of the present messenger of the great seal; but shall after his decease utterly cease and deter-

“mine; saving and excepting an allowance of two guineas on each writ for the election of a member to serve in parliament on any vacancy, and of the sum of fifty pounds on the calling of a new parliament; which allowances shall be paid to every messenger of the great seal to be hereafter appointed, from the hanaper office, in like manner as the present allowances for mileage are now paid.

“§ 5. And whereas the messenger of the great seal and his deputy have from time to time received certain other fees for the conveyance and upon the delivery of writs for the election of members to serve in parliament; be it enacted, that all such fees shall utterly cease and determine from the passing of this act; and that neither the said messenger, nor his deputy, nor any



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Memorandums  
of officers to  
whom writs di-  
rected on re-  
ceiving.

Memorandum  
by whom to  
be signed and  
where to be  
kept.

writs respectively to such office, and to deliver them there, to such officer or officers to whom they shall be respectively directed, or to his or their deputy or deputies, who are respectively required to give a memorandum in writing, under his or their hand or hands, to such postmaster, or deputy-postmaster, acknowledging the receipt of every such writ, and setting forth the day and hour when the same was delivered by such postmaster, or deputy postmaster, which memorandum is also to be signed by such postmaster, or deputy postmaster, by whom it is to be transmitted by the first or second post to the postmaster or postmasters-general, or their deputies, at the general post-office in *London*, who are to make an entry thereof in a book for that

“ other person, shall receive  
“ or take any fee, reward, or  
“ gratuity whatsoever, for  
“ the conveyance or deli-  
“ very of any such writ; and  
“ that the lords commission-  
“ ers of his majesty’s trea-  
“ sury shall direct the an-  
“ nual sum of five hundred  
“ and twenty pounds to be  
“ paid out of the consolidated  
“ fund to the present mes-  
“ senger of the great seal  
“ during the continuance of  
“ his life, in compensation  
“ for all such fees.

“ § 6. And be it further  
“ enacted, that every person  
“ concerned in the transmit-  
“ ting or delivery of any such  
“ writ as aforesaid, who shall  
“ wilfully neglect or delay  
“ to deliver or transmit any  
“ such writ, or accept any

“ fee, or do any other matter  
“ or thing in violation of this  
“ act, shall be guilty of a  
“ misdemeanor, and may,  
“ upon any conviction upon  
“ any indictment or informa-  
“ tion in his majesty’s court  
“ of king’s bench, be fined  
“ and imprisoned at the dis-  
“ cretion of the court for  
“ such misdemeanor.

“ § 7. And be it enacted,  
“ that every person who shall  
“ commit in *Scotland* any  
“ offence against this act,  
“ which is hereby declared  
“ to be a misdemeanor, shall  
“ be liable to be punished by  
“ a fine or imprisonment, as  
“ the judge or judges before  
“ whom such offender shall  
“ be tried and convicted may  
“ direct.”



purpose, and to file and keep such memorandum along with the duplicate of the messenger's acknowledgment, that the same may be inspected or produced upon all proper occasions, by any person interested in such election.

Sect. 4.

The same act, by § 2, directed persons, to whom writs for elections ought to be, and are usually directed, or their lieutenants or deputies, within one month after the passing of the act, to send up to the postmasters-general an account of the places of holding their offices, with their particular situation; and this is to be done from time to time as often as the same shall be changed; and in cases of such offices not being in any general post town or place, the nearest general post town or place was, and is, to be stated; a list of which places is to be hung up in some public place in the general post-office.—In cases of sheriffs, or other persons to whom such writs ought to be directed, holding their offices within the cities of *London* or *Westminster*, or the borough of *Southwark*, or within five miles thereof, § 3 of the act requires such account to be sent to the messenger of the great seal.

Officers, &c.  
to whom writs  
ought to be di-  
rected to notify  
to postmaster  
general the  
situation of  
their offices,

a list of which  
to be hung up  
in the general  
post-office.

Sheriffs, &c.  
holding their  
offices in *Lon-*  
*don*, &c. to no-  
tify to messen-  
ger of great  
seal, instead of  
postmaster  
general.

The profits and indemnity given to the messenger on account of the alteration effected by the act, are regulated by § 4 and 5.—By § 6, every person concerned in the transmitting or delivery of any such writ, who shall wilfully neglect or

Profits and in-  
demnity of  
messenger.

Delay in deli-  
very of writ,  
&c. a misde-



## Sect. 4.

meanor,  
punishable by  
fine and im-  
prisonment.

delay to deliver or transmit the same, or accept any fee, or do any thing in violation of the act, is to be guilty of a misdemeanor, and to be liable, upon conviction on indictment or information in the court of king's bench, to fine and imprisonment, at the discretion of the court.

Delivery of  
writs in Lon-  
don, Westmin-  
ster, Southwark,  
or when she-  
riffs offices  
within five  
miles.

*London, Middlesex*, and places having sheriff's offices in or within five miles of *London, Westminster, Southwark*:—By the stat. 53 Geo. 3. § 1 (a), the messenger or pursuivant of the great seal is to carry such writs as shall be directed to the sheriffs of *London*, or sheriff of *Middlesex*, to the respective offices of such sheriffs or sheriff.—By § 3, in cases of any sheriffs or other persons to whom writs ought to be directed, holding their offices within the cities of *London* or *Westminster*, or the borough of *Southwark*, or within five miles thereof, the messenger, or his deputy, is in like manner to carry the writs to such office.

Writ to be in-  
dorsed.

With respect to the indorsement to be made upon the writ:—The writ being delivered to the proper officer, he is required, by the stat. 7 and 8 Will. 3. c. 25, § 1, upon receipt thereof, to indorse upon the back of the writ the day he received the same.

(a) For this clause, see *ante*, 378.



## Sect. 5.

SECTION 5. *Scotland.*

WITH respect to the issuing writs upon a new parliament: (See *ante*, sect. 1.)

(a) Upon summoning a new parliament, by the statute 6 Ann. c. 6. § 5. the representatives of *Scotland* are to be elected and chosen by authority of writs, under the great seal of *Great Britain*, directed to the several sheriffs and stewarts of the respective shires and stewartries, which are accordingly made out in the same manner as those for *England*.

Append. cxx.  
Writs for Scotland, under the great seal of Great Britain, directed to sheriffs and stewarts.

In some instances, this representation of shires or stewartries, in *Scotland*, is alternate, as is the case (by the provisions of the union with *Scotland*) with respect to the shires of *Bute* and *Caithness*, those of *Nairn* and *Cromarty*, and those of *Clackmannan* and *Kinross*. Where this is the case, and such shire or stewartry has therein a royal borough (so as to make

(See *Append.* cxiii.)

(a) For the ancient process for choosing commissioners for the parliament of *Scotland*, see *Appendix*, xcix. The writs for *Scotland* are *mutandus mutatis* the same as for *England*, for the form of which see *Appendix*, vi.



## Sect. 5.

Where county representation alternate, in the writ to the sheriff of the requisition for the choice of a commissioner of the shire, to be omitted.  
*App. cxxii.*

it necessary that a writ should be sent to the sheriff, or steward), but has not then a turn to elect a commissioner, or knight of the shire, for that parliament, by the above statute, § 6, it is to be omitted out of the writ, that the sheriff or steward is to cause a knight or commissioner for that shire or stewartry, to be elected for that parliament.

Where there are high sheriffs, and sheriffs or stewards depute, writs to be directed to the latter, the former being forbidden to act.  
*App. clxxxv.*

In the direction of the writs to the sheriffs or stewards of the several counties, in counties where there is a principal or high sheriff, and also a sheriff or steward depute, the writs are (by the 35 Geo. 3. c. 65. § 2, which passed to remove doubts thereupon) to be forwarded and delivered to the sheriff depute, or steward depute, or to the substitute of each; and the high sheriff, or steward, is, by the same act, forbidden to receive it.

## Berwick writ.

The writ for the town of *Berwick*, is directed to the “mayor and bailiffs of the town of *Berwick-upon-Tweed*.”

*App. clxxviii.*  
Writs to be issued with all expedition.

By the statute 16 Geo. 2. c. 11. § 40. the lord chancellor, lord keeper, or lords commissioners of the great seal, are to issue out writs for the election of members for *Scotland*, with as much expedition as the same may be done.



With respect to issuing writs upon vacancies during a parliament (a):

Sect. 5.

(See *ante*,  
sect. 2.)

The act of the parliament of *Scotland*, 1707, adopted as part of the act of union, 5 Ann. c. 8. after regulating the turn of those shires or stewartries which are to be represented alternately, ordains, that in case of the death or legal incapacity of the members chosen, the same shire or stewartry shall elect another in his place; and there is a similar provision with respect to the representation of the boroughs.

*App. cxiii.*  
In shires, &c. where representation alternate, upon vacancy, during a parliament, the same shire which elected the person making the vacancy to elect again.

*App. cxvi.*

The provisions of the 24 Geo. 3. c. 26. apply equally to vacancies of seats for places in *Scotland*.

With respect to the delivery of the writ:

(See *ante*,  
sect. 4.)

By the statute 16 Geo. 2. c. 11. § 40. as well upon calling or summoning a new parliament, as in cases of vacancy during a parliament, the several writs are to be delivered to the sheriff or steward to whom the execution belongs, and to no other person whatsoever.

*App. clxxix.*  
Writs to be delivered to sheriffs or stewarts.

(a) Upon a vacancy for a steward, within whose jurisdiction any of the contributory boroughs are, a writ is sent to each sheriff or

\*

C C 2



## Sect. 5.

The general provisions of the recent statute of the 53 Geo. 3. c. 89. (a), apply as to the delivery of writs for elections in *Scotland*: and it appears that there had been subjects of complaint there as well as in *England*, which alike called for the interference of the legislature (b).

(a) For the stat. see *ante*, 378.

(b) In the case of *Kirkcudbright*, 26th February, 1795, complaint was made to the house that the writ, which had issued on the 15th January preceding, had not been executed, the messenger attending the great seal, and lord *Garlies*, the principal sheriff of the stewartry, were ordered to attend on days which were altered from time to time, but ultimately on the 25th of March.

On the 24th of March, a petition from Lord *Garlies* was presented, stating in substance his appointment to the office of sheriff, or steward principal, and that he conceived, and was advised, that he was therefore entitled to take and execute the writ; that he accordingly received it from the messenger, meaning to repair to *Kirkcudbright*; that he set out accordingly; that he went by way of *Edinburgh*, in order to take the oaths to qualify him for the above office, which could only be done before the barons of exchequer there; that he was also detained by the unusual

severity of the weather and badness of the roads; that being advised not only that he had a right to execute the writ, but that he had a discretionary power of fixing the day of election; that as the sheriff's right to name the day was considered unquestionable, so he found it universally understood that he might delay the publication of the writ till he had determined as to the day, because the publication or notices must name the day of election, and the day once named cannot be altered; that he took into his consideration the state of the country, and the convenience of the electors, many of whom would have been prevented from attendance if an earlier time had been fixed. He further stated, that he afterwards delivered the writ to the sheriff-depute, in order that he might give the notices, and fix the day of election; and his reason for doing so, instead of executing the writ himself, which was his first intention, was, that he found doubts suggested as to his own power, and though



Moreover, that statute, by § 7 (a), enacts, that every person who shall commit in *Scotland* any offence against that act (which is thereby declared to be a misdemeanor), shall be liable to be punished by fine or imprisonment, as the judge, or judges, before whom such offences shall be tried and convicted, may direct.

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Persons offend-  
ing in *Scotland*  
against 53  
Geo. 3, c. 89.  
liable to be  
fined and im-  
prisoned.

As to the indorsement to be made upon the writ:

The sheriff, or steward, to whom the writ is delivered, is required by the stat. 16 Geo. 2. c. 11. § 40. upon the receipt thereof, to indorse upon the back of such writ the day he received

App. clxxviii.  
Sheriff or stew-  
art, on receipt  
of writ, to in-  
dorse thereon  
the day of re-  
ceiving it.

he himself had none, he thought it best to proceed so as probably to obviate all difficulties; that if there was any error, it was unintentional; that he was ready to give any further explanation which the house might require; that he assured them, that nothing could be more remote from his thoughts than any degree of disrespect for the privileges of the house, and that he was extremely concerned at the inconvenience and trouble which the house had had upon that occasion. 50 Journ. 360.

been satisfied with the grounds whereupon the delay was thus accounted for, as all orders with respect to the writ in question were hereupon discharged.

The stat. 35 Geo. 3. c. 65. § 2. was passed to remove doubts upon this head, (*App. clxxxv.*) by which it is now settled, that in cases such as the above, the sheriff-depute, or steward-depute, or the substitute of each, is to act.

See 1 Wight 304, with respect to the delay in the delivery of the writ for *Clackmannanshire*, at the general election in 1774.

The house seems to have

(a) For this stat. *ante*, 382.



## Sect. 5.

Penalty on neglect.

the same, under the penalty of £100 upon such sheriff or steward if he neglect so to do, to be recovered according to that act.

SECTION 6. *Ireland.*

WITH respect to issuing writs upon a new parliament :

Order by the king in council for issuing writs.

Upon dissolution, and summoning a new parliament, the lord chancellor of *Ireland* is authorized, by an order of the king in council, as before mentioned (*a*), to issue writs for the places in *Ireland*.

(*Ante*, 346.)

App. cccxx.  
Upon summoning parliament of united kingdom, writ to issue under the great seal of Ireland, for election of members for places in Ireland.

By the act of union with *Ireland* (39 & 40 Geo. 3. c. 67.) art. 8, adopting the act of the *Irish* parliament, it is enacted, that whenever his majesty, his heirs and successors, shall, by proclamation under the great seal of the united kingdom, summon a new parliament of the united kingdom, the chancellor, keeper, or com-

(*a*) See the form of the order, *Appendix*, v.



missioners of the great seal of *Ireland*, shall cause writs to be issued to the counties, cities, the college of the *Holy Trinity* of *Dublin*, and boroughs in *Ireland*, specified in that act, for the election of members to serve in the parliament of the united kingdom, according to the numbers therein before set forth.

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And, by the same statute, copies of such writs, attested by the chancellor, keeper, or lords commissioners of the great seal of *Ireland*, are to be preserved in the crown office in *Ireland*, and to be evidence of such writs in case the original writs be lost.

App. cccxxi.  
Copies of writs to be attested and kept in the crown office of *Ireland*.

The writs are accordingly made out by the clerk of the crown in chancery in *Ireland*, and directed to the several sheriffs (a).

With respect to the issuing writs upon vacancies during a parliament :

(a) The county of *Tipperary* is a county palatine, but the writ issues to the sheriff as in the case of other counties.

The following places are counties of themselves, and have each two sheriffs, viz. the city and county of *Cork*,

the city of *Dublin*, the cities of *Kilkenny*, *Limerick*, and *Waterford*, the towns of *Carrickfergus*, *Drogheda*, and *Galway*. The city of *Londonderry* is also a city and county, but the sheriffs for the county are also sheriffs for the city.



## Sect. 6.

*App. cccxx.*  
Upon vacancies during a parliament, for places in Ireland, writ to be issued by the chancellor, &c. on certificate of the vacancy.

By the act of union with *Ireland* (the statute 39 & 40 Geo. 3. c. 67.) art. 8, adopting the act of the *Irish* parliament, upon any vacancy of a seat in the house of commons of the parliament of the united kingdom for any place in *Ireland*, by death or otherwise, the chancellor, keeper, or commissioners of the great seal, upon such vacancy being certified to them respectively, by the proper warrant, are forthwith to cause a writ to issue for the election of a person to fill up such vacancy; a copy of the writ being kept as before mentioned.

(See *ante*,  
sect. 4.)

With respect to the delivery of the writ, and the indorsement to be made thereupon:

*Ante*, 544.

It has been already stated that persons forcibly or fraudulently taking or secreting the writ or precept, are guilty of felony, and highly punishable.

*App. ccccxv.*  
County elections. Sheriff on receipt of writ to indorse it.

By the statute, 57 Geo. 3. c. 131, § 3, in the case of county elections, the sheriff is immediately after the receipt of the writ to indorse on the back thereof the date of receiving the same.

The law with respect to delivery of writs

There are no other statutory provisions corresponding with those for *England* and *Scot.*



*land*, but the house will, in the exercise of its inherent rights and privileges, exercise a general jurisdiction as to any misconduct regarding the delivery of the writ,

Sect. 6.

depends upon the general jurisdiction of the house as to its rights and privileges.

*Waterford*, 25th March, 1806. Notice being taken that no return had been made to the writ, the deputy clerk of the crown was ordered to attend 27th March. Upon his informing the house that no return had been brought into his office, a motion was made that the sheriffs of the county of that city should attend the house on the 14th April then next; but this motion was withdrawn, and the deputy clerk of the crown in *Ireland* was ordered to transmit to the house an account whether any return to the writ had been returned into his office, and on what day such return, if any, was returned into his office.

Steps taken by the house with respect to an Irish writ, to which no return had been made.

61 Journ. 169.  
175. 198.

On the 2d April a return and certificate, made by the deputy clerk of the crown in *Ireland* pursuant to the order of the house, were presented; and the house seems to have been satisfied therewith, as they made no further order.

(a) These are preserved with the papers of the session.



CHAPTER III.

OF THE PRECEPT.

SECTION 1. *Of making out the precept*

SECTION 2. *Of the delivery of the precept, and of the indorsement to be made thereupon.*

SECTION 3. *Scotland.*

SECTION 4. *Ireland.*

Precept,  
wherefore sent.

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THE writ, of which we have just treated, is uniformly the origin of the authority from the great seal for the election of members of parliament; but the officer to whom the writ is directed and delivered, is, with the exception of the case of an election for a county (other than for a county palatine), or for a city, town, or borough, being a county of itself, not the person who superintends the election to be holden under such writ.

(See post,  
chap. 5.)



Therefore, in the cases of the counties palatine, and of the cinque ports, the whole exigency of the writ is delegated by such officer, to some other quarter, for the purpose of its being carried into effect; and in other cases, so much of it as regards the election of citizens and burgesses.

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Precept a delegation of the exigency of the writ.

Such delegation takes place by what is termed the precept; and it will be seen that this process is exacted by the law, in all such instances of delegation, save in those of the counties palatine, (wherein the officer to whom the writ is directed is in no instance more than a medium of delivery.)

Precept requisite in all cases where the exigency of the writ is wholly or partially delegated; except in the counties palatine, where the writ may be forwarded by the officer to whom it is directed, to the sheriff.

This latter case does not fall within the direction of the statutes about to be mentioned; and it seems that the officer may either forward the writ itself, or make out a separate instrument (a) to the sheriff.

In different counties, and at different times, prior to the passing of the statute of 23 Hen. 6. c. 14, the practice with respect to sending precepts under the writ, seems to have varied.

(a) I am informed that the practice varies in the counties palatine in this respect.



## Sect. 1.

Heyw. Bor. El.  
(1st ed.) ch. 4.  
Precepts par-  
tially used be-  
fore the stat.  
23 Hen. 6.  
c. 14.

Heyw. Bor. El.  
114.

Originally, separate writs were sent to each place, and when the choice of citizens and burgesses came to be included in the same writ which commanded the choice of knights, in some instances the sheriff personally carried that also into effect; in others he sent the writ round to each returning officer, or a precept founded thereon, commanding him to proceed to such election (*a*).

The use of the precept was made general, by the statute 23 Hen. 6. c. 14. (*b*).

(*a*) Mr. serjeant *Heywood* has very ably traced the introduction and form of the precept from its original introduction. See his *Borough Elections*, chap. iv. (1st edit)

(*b*) The stat. 23 Hen. 6. c. 14. "*Who shall be knights for the parliament. The manner of their election. The remedy where one is chosen and another returned.*"

"*Item, whereas by authority of a parliament holden at Westminster, the first year of the reign of king Henry, father to the king that now is, amongst other things it was ordained, that the citizens and burgesses of cities and boroughs, coming to the parliament, should be chosen men citizens and burgesses resident, abiding, and free, in the*

"*same cities and boroughs, and none other, as in the same statute more fully is contained; (2) which citizens and burgesses, and no other, have always in cities and boroughs been chosen by citizens and burgesses, and no other, and to the sheriff of the counties returned, and upon their returns received and accepted by the parliaments before this holden. (3) And also, whereas by authority of a parliament holden at Westminster, the eighth year of the reign of the king that now is, it was ordained in what manner and form the knights of the shires coming to parliaments, from thenceforth to be holden, should be chosen, and how the sheriffs of the said counties*



That statute recited those of the 1 Hen. 5. c. 1.; and of the 8 Hen. 6. c. 7.; and that among many irregularities enumerated with respect to elections, sometimes the sheriffs had not returned the writs, but embezzled them; and moreover, made no precept to the mayor and bailiff, or to the bailiffs or bailiff, there being no mayor, of cities and boroughs, for the election of citizens and burgesses, to come to

## Sect. 1.

Every sheriff to make a precept, under his seal, to mayors, &c. &c. of cities and boroughs within his county.

“thereupon should make their  
 “returns, as in the same statute more fully appeareth;  
 “(4) by force of which statute elections of knights to come to the parliaments  
 “sometimes have been duly made and lawfully returned, until now of late, that  
 “divers sheriffs of the counties of the realm of *England*, for their singular  
 “avail and lucre, have not made due elections of  
 “the knights, nor in convenient time, nor good men  
 “and true returned, and sometimes no return of the  
 “knights, citizens, and burgesses lawfully chosen to  
 “come to the parliaments;  
 “(5) but such knights, citizens, and burgesses have  
 “been returned, which were never duly chosen, and other  
 “citizens and burgesses than those which by the mayors  
 “and bailiffs were to the said sheriffs returned; (6) and

“sometimes the sheriffs have not returned the writs which  
 “they had to make election of knights to come to the  
 “parliaments, but the said writs have imbesiled, and  
 “moreover made no precept to the mayor and bailiff, or  
 “to the bailiffs or bailiff where no mayor is, of cities and  
 “boroughs, for the election of citizens and burgesses to  
 “come to the parliament by the colour of these words  
 “contained in the same writs,  
 “*Quod in pleno comitatu tuo eligi facias pro comitatu tuo*  
 “*duos milites, et pro qualibet civitate in comitatu tuo duos*  
 “*cives, et pro quolibet burgo in comitatu tuo duos bur-*  
 “*genses*; (7) and also because sufficient penalty and  
 “convenient remedy for the party in such case grieved  
 “is not ordained in the said statutes against the sheriffs,  
 “mayors, and bailiffs, which do contrary to the form of the



## Sect. 1.

the parliament, by the colour of the words, *Quod in pleno comitatu tuo eligi facias, pro comitatu tuo duos milites, et pro qualibet civitate in comitatu tuo duos cives, et pro quâlibet burgo in comitatu tuo duos burgenses*; and because sufficient penalty, and convenient remedy for the party in such case grieved, was not ordained in the said statutes, against the

“ said statutes :” “ (8) the king  
 “ considering the premises,  
 “ hath ordained by authority  
 “ aforesaid, That the said sta-  
 “ tutes shall be duly kept in  
 “ all points; (9) and moreover  
 “ that every sheriff, after the  
 “ delivery of any such writ to  
 “ him made, shall make and  
 “ deliver without fraud, a suf-  
 “ ficient precept under his  
 “ seal to every mayor and  
 “ bailiff, or to bailiffs or  
 “ bailiff where no mayor is,  
 “ of the cities and boroughs  
 “ within his county, reciting  
 “ the said writ, commanding  
 “ them by the same precept,  
 “ if it be a city, to choose by  
 “ citizens of the same city,  
 “ citizens, and in the same  
 “ manner and form if it be a  
 “ borough, by the burgesses  
 “ of the same, to come to the  
 “ parliament. (10) And that  
 “ the same mayor and bailiffs,  
 “ or bailiffs or bailiff where  
 “ no mayor is, shall return  
 “ lawfully the precept to the  
 “ same sheriffs, by indentures  
 “ betwixt the same sheriffs  
 “ and them to be made of the  
 “ said elections, and of the  
 “ names of the said citizens  
 “ and burgesses by them so  
 “ chosen, and thereupon every  
 “ sheriff shall make a good  
 “ and rightful return, of every  
 “ such writ and of every re-  
 “ turn by the mayors and  
 “ bailiffs, or bailiffs or bailiff  
 “ where no mayor is, to him  
 “ made. (11) And that every  
 “ sheriff at every time that he  
 “ doth contrary to this sta-  
 “ tute, or any other statutes  
 “ for the election of knights,  
 “ citizens and burgesses to  
 “ come to the parliament,  
 “ before this time made, shall  
 “ incur the pain contained in  
 “ the said statute made the  
 “ said 8th year, and moreover  
 “ shall forfeit and pay to every  
 “ person hereafter chosen  
 “ knight, citizen, or burgess  
 “ in his county, to come to  
 “ any parliament and not duly  
 “ returned, or to any other  
 “ person, which, in default of  
 “ such knight, citizen, or bur-  
 “ gess will sue, an hundred



sheriffs, mayors, and bailiffs, the king then ordained thereby, that the recited statutes should be kept in all points, and that every sheriff should, after the delivery of any such writ to him, make and deliver, without fraud, a sufficient precept, under his seal, to every mayor and bailiff, or to bailiffs or bailiff, where no

“ pounds, whereof every  
 “ knight, citizen, and burgess  
 “ so grieved, severally, or any  
 “ other person which in their  
 “ default will sue, shall have  
 “ his action of debt against  
 “ the said sheriff, or his exe-  
 “ cutors or administrators, to  
 “ demand and have the said  
 “ hundred pounds, with his  
 “ costs spent in that case.  
 “ (12) And that in such action  
 “ taken by virtue of this sta-  
 “ tute the defendant shall not  
 “ wage his law of the demand  
 “ aforesaid in any wise, (13)  
 “ and that no defendant in  
 “ such action shall have any  
 “ essoin. (14) And in the  
 “ same manner at every time  
 “ that any mayor and bailiffs,  
 “ or bailiffs or bailiff, where no  
 “ mayor is, shall return other  
 “ than those which be chosen  
 “ by the citizens and burgesses  
 “ of the cities or boroughs  
 “ where such elections be or  
 “ shall be made, shall incur  
 “ and forfeit to the king forty  
 “ pounds, and moreover shall  
 “ forfeit and pay to every per-  
 “ son hereafter chosen citizen

“ and burgess to come to the  
 “ parliament, and not return-  
 “ ed by the same mayor  
 “ and bailiff, or bailiffs or  
 “ bailiff where no mayor is, or  
 “ to any other person which,  
 “ in default of such citizen  
 “ or burgess so chosen, will  
 “ sue, forty pounds, whereof  
 “ every of the citizens and  
 “ burgesses so grieved, seve-  
 “ rally, or any other person,  
 “ which in their default will  
 “ sue, shall have his action  
 “ of debt against every of the  
 “ said mayor and bailiffs, or  
 “ bailiffs or bailiff where no  
 “ mayor is, against their exe-  
 “ cutors or administrators, to  
 “ demand and have of every  
 “ the said mayor and bailiffs,  
 “ or bailiffs or bailiff where  
 “ no mayor is, forty pounds,  
 “ with his costs in this case  
 “ expended; (15) and that in  
 “ such action of debt, taken  
 “ by force of this statute, no  
 “ defendant in any wise shall  
 “ wage his law of the said  
 “ demand, nor have any es-  
 “ soin.”

§ 2. “ And that every she-



## Sect. 1.

Precept to recite the writ, and command the choice of citizens or burgesses.

mayor is, of the cities and boroughs within his county, reciting the said writ, commanding them by the same precept, if it be a city, to choose, by citizens of the same city, citizens; and in the same manner and form, if it be a borough, by the burgesses of the same, burgesses to the parliament.

“riff that maketh no due  
 “election of knights to come  
 “to the parliament, in convenient time, that is to say,  
 “every sheriff in his full  
 “county, betwixt the hour of  
 “eight and the hour of eleven  
 “before noon, without collusion in this behalf; (2) and  
 “that every sheriff that maketh  
 “not good and true return of  
 “such elections of knights to  
 “come to the parliament in  
 “time to come, as to them  
 “pertaineth, in manner and  
 “form aforesaid, shall forfeit  
 “to the king an hundred  
 “pounds, and also shall incur the pain of an hundred  
 “pounds to be paid to him  
 “that will sue against him,  
 “his executors or administrators, for this cause, by way  
 “of action of debt, with his  
 “costs in this behalf expended, without waging of law  
 “of his demand, or having  
 “essoin as afore is said.”

§ 3. “Provided always,  
 “That every knight, citizen,  
 “and burgess, to come to  
 “any parliament, hereafter

“to be holden in due form,  
 “chosen and not returned as  
 “afore is said, shall begin his  
 “action of debt aforesaid,  
 “within three months after  
 “the same parliament commenced, to proceed in the  
 “same suit effectually without fraud; (2) and if he so  
 “do not, another that will  
 “sue shall have the said action of debt (as it is before  
 “said) and shall recover the  
 “same sum, with his costs  
 “spent in this behalf, in  
 “manner and form aforesaid,  
 “so that no defendant in such  
 “action shall wage his law,  
 “nor be essoined in any wise  
 “as afore is said; (3) and if  
 “any knight, citizen, or burgess, hereafter returned by  
 “the sheriff to come to the  
 “parliament in the manner  
 “aforesaid, after such return,  
 “be by any person put out,  
 “and another put in his place,  
 “that such person so put in  
 “the place of him which is  
 “out, if he take upon him to  
 “be knight, citizen, or burgess, at any parliament in



The precept is, since the above statute of 23 Hen. 6. c. 14. deemed an essential process. It is laid down in the fifth resolution, in the case of *Winchelsea* (upon the question of certain votes given before the precept had been read), that "without a lawful precept the electors cannot proceed to an election, and whatsoever any elector speak, or say, touching the giving of his voice, is not of force, unless it be expressed judicially, in a lawful assembly for that purpose."

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Precept a necessary process.

Glanv. 12. 20.

Proceedings at election for boroughs, &amp;c. before reading the precept, void.

And lord *Coke*, speaking of elections for

4 Inst. 49.

"time to come, shall forfeit  
 "to the king an hundred  
 "pounds, and an hundred  
 "pounds to the knight, citizen, or burgess, so returned  
 "by the sheriff, and after  
 "as afore is said put out;  
 "(4) and that the knight, citizen, or burgess, which is  
 "so put out, shall have an  
 "action of debt of the same  
 "hundred pounds, against  
 "such person put in his place,  
 "his executors or administrators; (5) provided always,  
 "that he shall begin his suit  
 "within three months after  
 "the parliament commenced;  
 "(6) and if he do not, then  
 "he that will sue shall have  
 "an action of debt of the same  
 "hundred pounds against  
 "him, which is put in place of  
 "him that is so put out after

"such return, his executors,  
 "or administrators, and that  
 "no defendant in such action,  
 "shall wage his law nor be  
 "essoined; (7) and that such  
 "process shall be in the actions  
 "aforesaid, as in a writ  
 "of trespass done against the  
 "peace at the common law:  
 "(8) so that the knights of  
 "the shires for the parliament,  
 "hereafter to be chosen, shall  
 "be notable knights of the  
 "same counties for which  
 "they shall be chosen; or  
 "otherwise such notable esquires,  
 "gentlemen of the same counties,  
 "as shall be able to be knights;  
 "(9) and no man to be such knight  
 "which standeth in the degree  
 "of a yeoman and under."



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cities or boroughs, says, "any election, or voices given before the precept be read and published, are void, and of no force."

8 Journ. 90.  
Where no pre-  
cept is made,  
election it  
seems would be  
void.

*Weobly*, 16th July, 1660. The sheriff did not send any precept for the election; and this appears to have been one of the grounds whereupon the election was holden void.

9 Journ. 444.

*Weobly*, 23d February, 1677. The committee reported that sir *Thomas Williams* was duly elected. A debate arising in the house, whether the sheriff had duly issued forth his precept pursuant to the writ for making the said election; a motion being made, that the matter should be recommitted, and the question being put, it passed in the negative (*a*).

Since which cases the making out the precept is further enforced. The above statute of 23 Hen. 6. only speaks of sheriffs; but the statute 7 & 8 Will. 3. c. 25, requires precepts to be made out by the officer having the execution of the writ, without confining it to any particular description of persons.

(*Ante*, 347,  
348.)

That statute, by § 1, after directing that both in the case of summoning a new parliament, and in that of any vacancy during a parliament, the

(*a*) It seems as if some precept had been sent, and as if the question was as to its regularity.



writs should be delivered to the proper officer, and by him indorsed in manner before stated, further requires every such officer forthwith, upon the receipt of such writ, to make out the precept or precepts to each borough, town corporate, port, or place, within his jurisdiction, where any member or members are to be elected, to serve in any new parliament, or to supply any vacancy during a parliament (a).

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Officer receiving writ to make out precepts forthwith.

The precept should, in conformity to the above statutes, be made to the proper officer, according to the situation in respect of which the execution of such precept devolves upon him. The consideration of who such proper officer may be, belongs to a subsequent chapter.

Precept to be made out to the proper officer, according to the situation whereby he becomes so.

(See post, chap. 5.)

The house will take notice of any irregularity in this particular, as where a precept is directed to more or to fewer persons than it ought to be.

*Ludlow*, 12th November, 1597. The precept D'Ewes, 556.

(a) There is a penalty of whether any person can be £500, given by § 6. of the said to be a party grieved, above statute, for every wilful with respect to offences touching the precept within the offence contrary to the act; meaning of the act, so as to but this penalty is given to the party grieved; and *quare*, recover the penalties.



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was directed to the bailiff, instead of the bailiffs, which the committee reported to have occasioned differences in the returns. Some of the members of the house thought that the town, others that the sheriff, ought to be amerced. The case was referred back to the committee.

Glanv. 37.  
Precept directed to too many, the superfluous part may be rejected as surplusage.

Glanv. 38.

In the case of *Bletchingly*, 1623, the precept was directed to the bailiff and burgesses, whereas (as it was then considered) it should have been to the burgesses only; whereupon the committee reported, and the house agreed, that the word *bailiff* was surplusage, and the direction to the burgesses, who only had to do in the election, was sufficient in substance, and ought to be interpreted and applied only to signify such kind of burgesses as had voices in the election.

4 Burr. 2270.

The above proposition is further supported by the case of *Dickson v. Fisher*, K. B. which was an action for bribery, in respect of an election where a precept had been directed "to the mayor and commonalty of *Colchester*," the words, "and commonalty," being improperly introduced; but being struck through with a pen, lord *Mansfield* says, "These precepts ought to be directed to the returning officer." He afterwards adds, "These words were



put in by mistake; they are therefore struck out. They would be surplusage if they stood there. It is the same as if they had never been in. The precept ought to be directed to the returning officer; and the practice is so (a)."

It will be presumed, that the direction is proper, if nothing appear to the contrary, according to the resolution in the case of *Pontefract* (b), where it is said, "It is presumed that the warrant directed by the sheriff was well directed, nothing appearing to the contrary."

Precept will be presumed to be properly directed, unless the contrary shewn.  
Glanv. 138.

(a) In the above case lord *Mansfield* refused to admit parol evidence, which was offered for the purpose of shewing that the words in question were not obliterated, when the precept was delivered to the mayor, nor when it was returned by him.

(b) In the *Minehead* case, 23d May, 1717, (18 Journ. 565.) the sheriff sent two precepts, the second being sent from an apprehension of some mistake in the first. Both were dated the same day. Although the circumstance seems to have been productive of some confusion, the house did not take any formal notice of it.

For the form of the precept, see *Appendix*, xi.

Soon after the passing of the stat. 25 Car. 2. c. 9. under which members are chosen and returned for the city of *Durham*, it became a question how the precept was to issue for such election, it being observed that the sheriff himself only acted under a precept from the bishop. After discussion, a writ was ordered "for choosing two citizens to serve in parliament for the city of *Durham*, according to the act of parliament," leaving the doubt for further consideration; but the subject does not appear to have been resumed. 13th April and 14th May, 1675, and 25th February, 1677. 9 Journ. 316. 337. 445.



## Sect. 2.

SECTION 2. *Of the delivery of the precept, and of the indorsement thereupon.*

## 1. WITH respect to the delivery of the precept:

Officer receiving writ, and making out precepts, to deliver them within three days after the receipt of writ, by himself or by agent, to the respective officers having the execution thereof.

(*Ante*, 348.)

The precept being thus made, in conformity to the statutes of 23 Hen. 6. c. 14, and 7 & 8 Will. 3. c. 25. § 1, the officer having the execution of the writ is, within three days after receipt of the same, by himself, or proper agent, to deliver, or cause to be delivered, such precept or precepts, to the proper officer of every borough, town corporate, port, or place, within his jurisdiction, to whom the execution of such precept belongs or appertains, and to no other person whatsoever.

Misconduct with respect to delivery of precept will be inquired into by the house. (See *ante*, chap. 2, sect. 4.)

Any misconduct with respect to the delivery of the precept, is equally within the jurisdiction of the house, as with respect to the delivery of the writ.

58 Journ. 704, 705 725, 726.) Under sheriff having delivered the precept

*Minehead*, 8th, 9th, and 23d January, 1721, where the precept was delivered to other persons than the constables, the house having be-



fore (13th June, 1717), resolved, that the constables were the proper officers, the late high sheriff, the under sheriff, and others, were ordered to attend the house. Mr. *Stroud*, the high sheriff, was unable to attend, on account of infirmity; but the house, after examining into the matter, and after referring to the 7 & 8 Will. 3. c. 25, resolved, "That ——— Day, late under sheriff of the county of *Somerset*, having delivered the sheriff's precept, for electing a burgess to serve in parliament for the borough of *Minehead*, to *John Vicary*, and *Joseph Sherry*, two of the burgesses of the said borough, but not constables thereof, is guilty of a breach of trust, and contempt of the authority of this house."

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to other persons than the proper officer, censured, and committed to custody.

And he was committed to the custody of the serjeant at arms.

With respect to the *cinque ports*, the statute 10 & 11 Will. 3. c. 7. § 2. (a), which recites the

In the cinque ports, six days allowed from

(a) The stat. 10 & 11 W. 3. c. 7. "An act for preventing irregular proceedings of sheriffs, and other officers, in making the returns of members chosen to serve in parliament."

§ 2. "And whereas by an act made in the seventh and eighth years of the reign of his present majesty, intitled, *An act for the further regulating elections of members to serve in parliament, and for the preventing*



## Sect. 2.

Receipt of writ  
for delivery of  
precept.

above provision of the statute 7 & 8 Will. 3. c. 25. § 1, and that by experience such time had been found too short for the performance of the same in the cinque ports, enacts, that the proper officer there shall be allowed six days from the receipt of the writ, for the delivery of the precept.

2. With respect to the indorsement to be made upon the precept:

Officer having  
the execution  
of the precept  
to indorse the  
day of his re-  
ceiving it,  
in the pre-  
sence of the  
party from  
whom he re-  
ceives it.

The statute 7 & 8 Will. 3. c. 25, having directed the making and delivery of the precept, to the officer to whom the execution belongs, requires every such officer, to indorse upon the back of such precept, the day of his receipt

*“ irregular proceedings of she-  
“ riffs, and other officers, in  
“ the electing and returning  
“ such members, it is pro-  
“ vided and enacted, That  
“ the officer, on the receipt  
“ of any such writ, shall,  
“ within three days after such  
“ his receipt, by himself or  
“ proper agent, deliver, or  
“ cause to be delivered, a pre-  
“ cept or precepts to the pro-  
“ per officer of every borough,  
“ town corporate, port, or  
“ place, within his jurisdic-  
“ tion, to whom the exe-  
“ cution of such precept doth  
“ belong or appertain, which*

*“ by experience hath been  
“ found too short a time for  
“ the performance of the same  
“ in the cinque ports;” “ be  
“ it therefore enacted, by the  
“ authority aforesaid, That,  
“ from henceforth, the proper  
“ officer of the cinque ports  
“ shall be allowed six days  
“ from the receipt of such  
“ writ for the delivery of the  
“ precept, according to the  
“ purport of the said act, any  
“ thing in the said act, or any  
“ other law, statute, or usage,  
“ to the contrary in any wise  
“ notwithstanding.”*



thereof (*a*), in the presence of the party from whom he received such precept,

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(*Ante*, 348.)

Upon the new modelling the boroughs of *New Shoreham*, *Cricklade*, and *Aylesbury*, this requisition was repeated in the respective statutes regarding the elections at those places: viz.

By the statute 11 Geo. 3. c. 55. § 5, with respect to *New Shoreham*, the constable, or other proper officer to whom any writ (*b*), or precept, shall be directed, for making any election for that borough, is, upon receiving such writ or precept, to indorse upon the back thereof, the day of his receipt thereof, in the presence of the party from whom he received such precept.

*App. lxxii.*  
*New Shoreham*,  
officer there to  
do the like.

(*a*) In an action for the recovery of penalties for bribery at an election, it need not be proved that the precept was thus indorsed, in order to support the allegation of the issuing of the precept, and the holding the election under it. *Gray v. Smithies*, 4 Bur. 2273.

In a similar action, in order to support an allegation that a precept issued, &c. the sheriff produced the original precept; it was objected that the original ought to

have been returned and filed in chancery, and therefore that a copy of the precept on record would have been the proper evidence. But the court held the evidence offered, sufficient. *Mead v. Robinson*, Willes's Rep. 422.

(*b*) Although the statute makes use of the term writ or precept, from the latter part of the above sentence, where the term writ is omitted, it evidently applies only to the precept.



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*Cricklade*,  
officer there to  
do the like.  
*App. lxxxiii.*

With respect to the borough of *Cricklade*, there is a similar requisition, by the statute 22 Geo. 3. c. 31. § 5.

*Aylesbury*,  
officer there to  
do the like.  
*App. lxxxvii.*

And also with respect to the borough of *Aylesbury*, by the statute 44 Geo. 3. c. 60. § 4.

SECTION 3. *Scotland.*

*App. cxxi.*  
Sheriff of *Edinburghshire*, on receipt of writ, to direct precept to the lord provost of *Edinburgh* for the election of a burghess.

THE stat. 6 Ann. c. 6. § 5. after directing the issuing the writs to the several sheriffs and stewarts, requires the sheriff of the shire of *Edinburgh*, on the receipt of the writ directed to him, forthwith to direct his precept to the lord provost of the city of *Edinburgh*, to cause a burghess to be elected for that city.

Sheriffs or stewarts, on receipt of writs, to direct precepts to royal boroughs to elect delegates, &c.

And as to the other royal boroughs, which are divided into fourteen classes, or districts, the sheriffs, or stewarts, are required, by the same clause, on receipt of their several writs, forthwith to direct their several precepts to every royal borough within their respective



shires or stewartries, reciting therein the contents of the writ, and the date thereof, and commanding them forthwith, to elect each of them a commissioner, as they used formerly to elect commissioners to the parliament of *Scotland*, and to order such commissioners to meet at the presiding borough of the district (naming it), upon the thirtieth day after the date of the *teste* of the writ (unless it be on Sunday, and then on the next day), and then to choose their burgess for parliament.

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By the stat. 7 Geo. 2. c. 16. § 5, the precepts are to be issued within four days; and the requisition of the law herein is again more minutely pointed out by the stat. 16 Geo. 2. c. 11. *App. cxlvi.*

§ 40, whereby the sheriff, or steward, having received and indorsed the writ, is, in every case, forthwith upon the receipt of the same, at least within the space of four days from the receipt thereof, to make out a precept to each borough within his jurisdiction, to elect a commissioner for choosing a burgess to serve in parliament (*a*), and to cause the same to be delivered to the chief magistrate of such borough, resiant in the borough for the time being.

Sheriff or steward, on receipt of writ, forthwith, within four days, to make out precepts to boroughs for election of commissioners for choosing burgesses.

(*a*) For the form of a precept, see *Appendix*, cxcv.



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Penalty on  
sheriff or stew-  
art for neglect  
therein.

And by the same clause, in case such sheriff, or steward, shall neglect to make out his precept, and to deliver the same to the chief magistrate, within the time, and in the manner above directed, he is to forfeit, for every such offence, £100, to any magistrate of the borough to which the precept is not "timeously" delivered, who shall sue for the same according to the directions of the act.

Chief magis-  
trate, on re-  
ceipt of pre-  
cept, to in-  
dorse the day  
on which he  
received it.

Penalty for  
neglect there-  
in.

By § 41 of the same statute, the chief magistrate of the borough to whom the precept is to be so delivered, is, upon the receipt thereof, to indorse the day he received it, under a penalty (by § 42.) in case of neglect, of £100, to any magistrate or counsellor of the borough that will sue.

SECTION 4. *Ireland.*

App. ccxxxix.  
Sheriff, within  
four days after  
receipt of writ,  
to issue pre-  
cept.

BY the *Irish* stat. 35 Geo. 3. c. 29, § 3, the sheriff of every county is, within four days after he shall receive the writ for the election of any members to serve in parliament, for any



place or places within his county, to issue his precept or precepts.

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And by the same clause, he is to cause the same to be delivered to such acting magistrate or magistrates, officer or officers, of such place or places, as made the last return of members to serve in parliament for the same, whether he be mayor, sovereign, port-reeve, provost, burgo-master, bailiff, or seneschall, and to no other person.

Precept to be delivered to the magistrate or magistrates, or officer or officers, who made the last return.

(Ams 410  
411.)



## CHAPTER IV.

OF THE ELECTION OF DELEGATES FOR BOROUGHS  
IN SCOTLAND.

SECTION 1. *Of the purpose of the election of delegates,  
and of the notice thereof.*

SECTION 2. *Of the proceedings at elections of delegates,  
and herein of the oaths to be taken thereat.*

(*Ante*, 410,  
411.)

THE election of delegates, or commissioners, to choose burgesses for the boroughs in *Scotland*, has been alluded to, when treating of the making out and delivery of the precept, and will, from time to time, be again referred to, in the course of this work; it becomes, therefore, requisite to give a short explanation of the purpose of such elections, and of the manner of carrying them on.

Upon the union of *England* with *Scotland*, the latter ceasing to have a parliament of its own, and it being settled by the act of the par-



liament of *Scotland*, of 1707, adopted by the statute 5 Ann. c. 8, that, together with thirty members to be chosen by the shires, fifteen should be chosen by the royal (a) boroughs, as the representatives of *Scotland*, in the parliament of *Great Britain*, the outline of the election of such representatives of the boroughs was given by that act; upon the enactment of which more minute regulations have been since grafted, by subsequent statutes.

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App. cxii. cxiii;

Of these fifteen members, the city of *Edinburgh* (which for near a century before, had returned two representatives for the parliament of *Scotland*) returns one; the other royal boroughs (each of which, during the same period, had had one representative for the parliament of *Scotland*) return the remaining fourteen.

1 Wight, 329.

The election of a burgess for the city of *Edinburgh* has no peculiarity, being carried on in the same manner as elections for boroughs in *England*: the election for the remaining fourteen burgesses, is what requires to be explained, that being effected in a mode which is peculiar to itself.

(a) The general distinction of boroughs which were termed royal is, that the former hold of the crown; but this is not quite universal. See this fully explained, 1 Wight, 330.



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At these elections, the choice is not at once made by the main body of electors, but the magistrates and town counsellors (*a*), who are the electors in the first instance, choose commissioners or delegates; and they elect the burghesses for parliament.

The royal boroughs (except Edinburgh) divided into 14 districts. (See these, App. cxiv.)

For the purpose of establishing this mode of election, the royal boroughs were, by the act of union, divided into fourteen classes or districts, composed in some instances of five, in others of four contributory boroughs.

Each contributory borough chooses one delegate, which, by the act of union, they are required to do as they had been in use to elect commissioners to the parliament of *Scotland*; and the manner of this election is more precisely pointed out by the statutes 7 Geo. 2.

(*a*) The number of magistrates and town counsellors varies in different boroughs, according to their respective constitutions. Their election is explained, 1 *Wight*, 333, *et seq.* which it may frequently be useful to refer to in considering the validity of corporate acts, as affecting the choice of delegates; but for the reason before given, it is not intended to enter

with any degree of minuteness into that part of the subject.

See the provisions of 7 Geo. 2. c. 16. and 16 Geo. 2. c. 11. with respect to these elections, and the jurisdiction of the court of session thereupon, App. cxlvi. and clxvi. For cases which have occurred in the court of session, see *Wight*, lib. 4. chap. 1.



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c. 16, and 16 Geo. 2. c. 11. And it is to be observed, that as the regularity of these proceedings is essential to the title of the delegate, to enable him to act at the subsequent election of the burgess, and is questionable by petition against the return of such burgess, it is very material to attend to the requisites of the law, in making this preliminary choice.

The precept having been made out, and delivered to the chief magistrate of the borough, and by him indorsed, in manner before mentioned, such chief magistrate is, by the statutes 7 Geo. 2. c. 16. § 5, and 16 Geo. 2. c. 11. § 41 and 42, within two days after his receipt of the precept, to call and summon the council of the borough together, by giving notice personally, or by leaving it at the dwelling place of every counsellor then resident in the borough, under a penalty of £100 for neglecting so to do, to be recovered according to the directions of the act,

(*Ante*, 412.)  
Chief magistrate, within two days after receipt of precept, to summon the council.  
*App.* cxlv; clxxix.

Penalty on neglect.  
*App.* clxxx.

The council of the borough thereupon assembling, also in conformity to the same statutes, appoints a peremptory day for the election of a delegate, two free days intervening between the meeting of the council for such

Council to appoint a day for election of a delegate; two days to intervene between day of appointment and of election.  
(*See post*, 422.)



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appointment, and the day of the election of such delegate.

1 Peck. 252.  
Quære, whether it is necessary that a majority of magistrates and town councillors should be present at the meeting for appointing the day of election of a delegate?

With respect to this meeting for appointing the day of election, a question was made, whether it is necessary that a majority of the magistrates and town councillors should be present, in the case of *Stranraer*, &c. 1803, where the validity of the election and return of Mr. *Spalding*, the sitting member, depended upon the legality or illegality of such meetings, in two of the contributory boroughs, viz. in *Wigton* and *Whithorn*.

Quære, whether it be necessary at the boroughs of *Wigton* and *Whithorn* in particular?

The objection insisted upon by Mr. *Agnew*, the petitioner, was the want of the presence of a legal quorum at the meetings of council held in each of these boroughs, for fixing the day of election of a delegate; and it was contended on his part, that the proceedings in each of these councils were void for this defect; the effect of establishing which objection would have been, to give him the seat, by invalidating the vote of two of the delegates who had voted for the sitting member.

The council of each of the boroughs in question, consists of a provost, two bailies, and fifteen counsellors: by the constitution of neither is any particular number fixed to be a quorum. At the time of appointing the day for the elec-



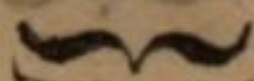
tion of a delegate, the number of corporators was complete in each; but at the meeting held for that purpose, there were present, at *Wigton*, only the two bailies, and seven counsellors, one of whom was a collector of customs, and another a distributor of stamps. At *Whithorn*, the two bailies and four councillors only attended; one of the bailies was postmaster of the borough. Of the persons absent from *Wigton*, were the earl of *Galloway*, who was provost; and lord *Garlies*, his eldest son.

From the records of the borough of *Wigton* (which go no further back than June, 1735), there appeared to have been sixteen meetings to appoint a day for the election of delegates. In six of these (all previous to March, 1762), and on the 22d of October, 1774, a majority of the council were present; in eight instances a less number than the majority attended; and, on the 20th of June, 1790, the provost and eight other members.

At *Whithorn*, from the year 1734, there had been sixteen meetings held for the same purpose: at twelve of them a majority had been present; at one, nine persons; at another, the number did not distinctly appear. Two meet-



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ings only appeared to have been constituted by less than nine.

It was not denied but that the resident members of each borough were regularly summoned.

It was insisted by the petitioner, that the meetings in question were illegal, and not duly constituted.

It was argued, on his part, that by the law of *Scotland*, when the sett of a borough, composed of a definite number of corporators, does not appoint any particular number to be a quorum, there must be present a major part of the whole number, for the purpose of doing any corporate act; that every act required to be done by the council of a borough is necessarily a corporate act; and that in every corporate act a majority must join (*a*).

For the sitting member it was contended,

(*a*) In support of this proposition, the case of *The King v. Bellringer*, depending upon the law of *England*, was cited as analogous (see 4 T.R. 810.) and the cases of *St. Andrew's* and *Queensferry*, where elections of magistrates and town councillors were set aside by the court of session, upon the ground contended for. See 1 Peck. 256 and 260, note A. and the authorities there cited.



first, that in the borough of *Wigton* there was a majority of persons competent to act, actually present; for that, of the absentees, one was a peer, and could not therefore interfere concerning an election of the commons, which reduced the total number to seventeen, of whom nine were a majority (a).

Secondly, it was insisted, that a majority was not necessary for fixing the day of election of a delegate; the general rule contended for by the other side was denied; and it was said, that by the usage of the particular boroughs, it had been customary for a much fewer number than the majority of the counsellors to attend upon such occasions. It was also argued from the statute, that from the shortness of time allowed to intervene, between the delivery of the precept to the sheriff and the meeting to fix the day for the election, it does not appear to be thought necessary that any who are not resident should attend.

(a) Of those present, one being viz. lord *Galloway*, and lord a collector of the customs, it *Garlies*, his eldest son, who was therefore said to be questionable whether he could legally appear at that assembly; but this was not very material to decide, because, on the other hand, of those who were absent there were two, who were ineligible, and incapable of voting; so that if those only who were capable of acting were calculated as to the number present, the same rule would hold in calculating the number who were absent.



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Lastly, it was contended, that the meeting in question was not a corporate act, and therefore not within the rules which are in some instances applicable in cases of corporations.

The determination of the committee was in favour of the sitting member, but whether upon the ground that there was a majority present of those who were capable of acting, or that, by the usage in the particular boroughs or generally, it was not necessary that a majority of the whole, some being not resident, should attend, does not appear.

(See *Glasgow*,  
423.)

SECTION 2. *Of the proceedings at elections of delegates, and herein of the oaths to be taken thereat.*

Election of a delegate holden without two days previous appointment, seems illegal.

AT the time thus previously appointed, the election of a delegate takes place; nor it should seem will it be legal, if holden otherwise than by such appointment.

2 Doug. 181.  
(*Post*, 435.)

In the case of *Wigton, &c.* 1775, which will be mentioned upon another question, one objection made to the choice of a delegate (whose election was disallowed), was the want of the previous appointment required by law.



It seems fully established by the resolutions in the case of *Glasgow*, &c. 1803, that at the election of a delegate, a majority of magistrates and town councillors must be present, and that such majority must consist of persons qualified to vote.

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At election of a delegate, a majority of magistrates and town councillors must be present, and must consist of persons qualified to vote.

In that case, Mr. *Boyd* petitioned against the election and return of Mr. *Houston*, upon the ground of the illegality of the election of the delegate for *Dumbarton*, one of the contributory boroughs.

1 Peck. 351:

The magistrates and common council of the borough of *Dumbarton* consist of a provost, two bailies, a dean of guild, and a treasurer, with ten other councillors, making in all fifteen. At the meeting for the purpose of electing a delegate, eight of these were present, of whom one was alleged to be disqualified from voting, and ultimately decided so to be.

The petitioner contended, that the election of a delegate was a corporate act; that it was necessary that a majority of the corporators should be present; that that majority must be composed of persons duly qualified to vote at such election; and that one of the persons voting was disqualified, (into the particulars of which latter point it is not now material to enter).



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The contrary of each of these propositions was insisted upon by the sitting member.

1 Peck. 353,  
354.

The evidence of usage, in this respect, at *Dumbarton*, was somewhat contradictory; so that the decision must have been founded upon general principles.

The committee decided, that the petitioner was duly elected; and from the questions involved in the case, in so doing necessarily established what is above stated to be the law.

Precept and  
bribery act to  
be read.

*App.* xiii.

*App.* clxxiv.

A sufficient number of magistrates and town councillors being assembled, the precept is read, and also the statute 2 Geo. 2. c. 24, in conformity to § 9, of that act, (the elections of delegates being, by the statute 16 Geo. 2. c. 11. § 33, declared to be within that of the 2 Geo. 2. c. 24, to all intents and purposes).

Magistrates  
and town coun-  
cillors to take  
and sign oaths  
of allegiance  
and assurance,  
*App.* clxix.  
(See these oaths,  
*App.* xxv.  
cvi (c).)

The magistrates and town councillors then take the oath of allegiance, and sign the same, with the assurance, as required by the statute 16 Geo. 2. c. 11. § 26 (a).

(a) See also the *Scots* acts through the medium of the 1690, c. 4, and 1693, c. 6, general direction of the act of *App.* cvi (a), cvi (b), which, union, that the elections are



And, if required by any person present at the meeting, in conformity to that act, and to the 6 Ann. c. 23. § 13, explained by the statute 1 Geo. 1. c. 13, they are to take the oath of abjuration.

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and to take the oath of abjuration, if required by any person present, App. cxxxiv. cxlii.

(See the oath, App. cxxviii. xxvii.)

App. clxix. and any other oaths appointed to be taken, if required ;

They are also, if required, in conformity to the same clause of the statute 16 Geo. 2. c. 11, to take all the other oaths appointed to be taken at such election, by that or any former act (*a*).

It seems that, although the law points out these oaths, and requires them to be taken according to the particular form given by such statutes, and the persons administering them are responsible for the proper administration of them, yet if, by mistake, another form of oath, which is in disuse, is administered to the elec-

to be made as for the parliament of *Scotland*, would operate at elections for delegates.

(*a*) It is not clear what oaths were contemplated, as being appointed by former acts. Allusion may possibly have been intended to the *formula* in the *Scots* act of the 23d November, 1700. The act of union, after directing, amongst other elections, those

of commissioners to choose burgesses, declares, that none shall be capable to elect or be elected to any of the said estates, who being suspected of popery, and required, refuse to swear and subscribe the *formula*. (See App. cxiv. cxvi.) but I do not find that Mr. *Wight* mentions the *formula* as to be taken at elections of delegates.



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tors of delegates, instead of the proper one which has been substituted for it, the election of the delegate will not be thereby avoided, the oath being substantially the same.

Where an obsolete form of assurance had

*Glasgow, &c. 1807 (a).* Mr. *Alexander* petitioned against the election and return of Mr.

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(a) *The case of the boroughs of Glasgow, Dumbarton, Renfrew, and Rutherglen.*

The committee was appointed on the 17th of March, and consisted of the following members:

HENRY BANKS, Esq. Chairman.

John Hammet, Esq.

John Lowther, Esq.

Lord George Thynne.

The Right Hon. John Smith.

Sir David Wedderburne, Bart.

Earl of Euston.

George Granville Venables Vernon, Esq.

Lord Charles Somerset Manners.

Sir Robert Williams Vaughan, Bart.

Thomas Ashton Smith, Esq.

Lord Viscount Templeton.

The Hon. John Vaughan.

Peter Moore, Esq.

The Right Hon. Robert Dundas, } Nominees.

Petitioners — *Boyd Alexander*, Esq.; The Provost and Bailies of *Rutherglen*.

Sitting Member — *Archibald Campbell*, Esq.



*Campbell*, upon the ground that the delegates for the boroughs of *Renfrew* and *Dumbarton*, who had voted for him, had been illegally elected, the oaths required by law at such elections not having been taken, or not having been duly taken.

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been administered to electors of delegates, instead of one which had been since substituted by law, their election holden good notwithstanding.

It appeared that there had been an irregularity at each of these boroughs, with respect to

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Counsel for the petitioner, Mr. *Alexander*—Mr. *Alexander* and Mr. *Gillies*.

Counsel for the petitioners, Provost and Bailies of *Rutherglen*—Mr. *Warren*.

Counsel for the sitting Member—Mr. *Plumer*, Mr. *Dallas*, and Mr. *Boyle*.

The petition of Mr. *Alexander*, which had been presented 1st Jan. 1807, in substance (amongst other allegations which were not insisted upon upon the trial of the petition) stated, that at the election he and Mr. *Campbell* were candidates; that the delegates from the boroughs of *Glasgow* and *Rutherglen* voted for the petitioner, and that certain persons, pretending to be delegates from the boroughs of *Renfrew* and *Dumbarton*, voted for Mr. *Campbell*; and that the oaths and assurance required by law to be taken and subscribed by magistrates and counsellors, and common clerks, at elections for delegates for choosing members of parliament, were not taken and subscribed, or not duly taken and subscribed by the magistrates, counsellors, and common clerks of *Dumbarton* and *Renfrew*, upon the occasion of the elections of the delegates in question, whereby they were respectively



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subscribing the assurance, the form given by the statute 1 Geo. 1. stat. 2. c. 13. § 3, having been used instead of that substituted for it by the statute 6 Geo. 3. c. 53. § 1.; and that at the election of the delegate for one of these, viz. that of *Renfrew*, the mistake had arisen from the directions given by the sitting member;

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disqualified from voting and acting at the elections of such delegates; that the elections of such delegates were (upon this as well as several other grounds set forth in the petition) utterly void and null, and that therefore they were not qualified or entitled to vote in the election of the burgess to represent the district in parliament. And the petitioner complaining that the election of Mr. *Alexander* had been brought about by illegal means, claimed that he ought to have been returned.

The petition of the provost and bailies of *Rutherglen* (presented January 2d) contained allegations to the same effect.

It appeared, with respect to the administration of the oaths, upon which the only irregularity seriously contended for depended, that the oaths of allegiance and abjuration had been regularly taken at the election of each of the delegates in question, but that at *Renfrew* the assurance was interlined, and written in one place upon an erasure, and that it ran, "I do sincerely and faithfully promise and engage."

The words *sincerely and faithfully* were interlined, and the word *engage* was written on an erasure, the word *swear* having been erased. The common clerk stated, that he had first written it, "I do promise and swear;" but upon the



but that in other respects the election of the delegates had been regular.

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The committee decided in favour of the sitting member, whose election depended upon

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sitting member desiring him to pursue the forms used in the preceding contested election of 1802, he had made the alteration in question.

The form in which the assurance had been subscribed was that given by the stat. 1 Geo. 1. stat. 2. c. 13. § 3. instead of the form now used, which was substituted by the 6 Geo. 3. c. 53. § 1. (*For which see Appendix, cvi (c), n. (b).*)

The assurance subscribed at the election of the delegate for *Dumbarton* was that given by the 6 Geo. 3. except that it ran, "I do faithfully promise and swear," instead of "I do promise and swear."

It did not appear that there was any other irregularity in subscribing the assurance at either of the elections in question.

Under the above circumstances, the petitioner contended for the seat.

The committee having resolved that the delegates for *Renfrew* and *Dumbarton* were duly elected; on the 20th March reported to the house, by their chairman, that the sitting member was duly elected.

They also decided that the petition did not appear to be frivolous or vexatious. See 62 Journ. 30. 39. 247. 262.



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the validity of that of the delegates in question.

Where the oath of allegiance was administered to electors of delegates, with the alteration of a word, but in substance tantamount to the proper oath, their election holden good notwithstanding.

So, in the case of *Wick, &c. (a)*, 1807, where the oath of allegiance at the election of a delegate for the borough of *Dingwall* had been administered, with the alteration of a word or two, but was in substance similar to the proper oath, the election of general *Mackenzie*, who was petitioned against by sir *John Sinclair*, and, upon the ground of such irregularity in the election of one of the delegates, contended to

(a) In the cases of the districts of *Wick, Tain, Dingwall, Dornock, and Kirkwall*, 1807, and of *Linlithgow, Selkirk, Lanerk, and Peebles*, 1807, it appeared that the proper forms prescribed by law, with respect to the administration of the above oaths, had not been observed, and this seems to have been discussed before the committees under general allegations of irregularity, the petitions in those cases containing no particular allegations respecting the oath of allegiance, or the assurance.

In that of *Wick, &c.* wherein sir *John Sinclair* was petitioner, and general *Mackenzie* was sitting member, it appeared that the oath of allegiance at *Dingwall*, instead of being administered to the electors in

the form prescribed by the statute, (for which see *App. xxv*), was administered thus, "I do sincerely promise and swear that I will bear faithful and true allegiance to his majesty king *George* the third."

The petition was presented 1st January, 1807, the committee appointed 27th February, and on the 6th March they made their report, that the sitting member was duly elected, and that the petition did not appear to be frivolous or vexatious.

In that of *Linlithgow, &c.* the petition was presented 1st Jan. 1807; Mr. *Maxwell* was petitioner, and sir *Charles Ross*, bart. was the sitting member. It appeared that, at the election of a delegate for *Lanerk*, the oaths of allegiance and abjuration were regularly taken,



have been improperly returned, was holden by the committee, to be valid.

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And in the case of *Linlithgow, &c.* 1807, sir *Charles Ross* was also holden duly elected, although it appeared that, at the election of a delegate for the borough of *Lanerk*, the word "shall" was substituted in the oath of allegiance, for that of "will;" and in that for a delegate at *Selkirk*, the words "and swear," were omitted in the assurance.

So where in the oath of allegiance administered, the word "shall" was substituted for "will," and in the assurance, the words, "and swear," were omitted.

Every person claiming to vote at such election, is also, if the same be demanded by any

also the oath against bribery, if required

except that the word "*shall*" was substituted for "*will*;" that the assurance was read, but by mistake the oath of abjuration was signed instead of it.

which are directed to be taken, in the election of delegates for the boroughs of *Lanerk* and *Selkirk*, were not such as to avoid the election.

At the election of a delegate for *Selkirk*, the oath of allegiance was duly taken and subscribed; the oath of abjuration was not taken (that, however, as is stated above, is not necessary, unless required); the bribery oath was taken, and the assurance subscribed, but in the latter, the words "and swear," were omitted.

And on the 25th March, the chairman reported to the house that the sitting member was duly elected, and that the petition did not appear to the committee to be frivolous or vexatious. 62 Journ. 35. 257. 295.

The committee resolved, that the irregularity complained of respecting the oaths

These cases of *Glasgow, &c.* *Wick, &c.* and *Linlithgow, &c.* are extracted from notes furnished me by Mr. *Wakefield*; and I have also referred to the minutes taken before the committees.



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by an elector,  
*App. clxxv.*  
 (where see the  
 oath.)

elector, according to the statute 16 Geo. 2. c. 11. § 34, to take the oath therein against bribery, which any of the magistrates, or in their absence, any of the town council, may administer.

Before proceeding to election, common clerk to be sworn.

*App. clxxv.*  
 (where see the  
 oath.)

The common clerk of the borough is also to be sworn; being required, before proceeding to election, to take and subscribe the oath in the statute 16 Geo. 2. c. 11. § 35, which any of the magistrates, or any two of the town council, may administer to him.

These requisites having been observed, the election of the delegate takes place; nor does it appear that there is now any restriction in the choice of the person.

*App. clxxi.*

No objection to delegate that is not resident, bearing all portable charges, or that he is not

It seems that formerly some connection with the borough by which he was chosen was necessary, in order to his eligibility to become a delegate; but that has been rendered unnecessary, by the statute 16 Geo. 2. c. 11. § 29, whereby it is no objection to him, that he is not resident within the borough, bearing all portable charges with his neighbours; or that he is no trafficking merchant therein; or that he is



not in possession of any burgage lands or houses, holding of the borough; and that such qualifications need not be engrossed in his commission.

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a trafficking merchant, nor possessed of burgage land or house.

Such qualifications not to be engrossed in commission.

1 Wight, 363.

The common clerk marks the votes (*a*) as they are given: and at the conclusion of the election, the provost, or other person (if any) so authorized, by the sett of the borough giving the casting vote in case of equality, the council declare the person chosen by the majority to be their commissioner. Whereupon the common clerk, in conformity to the stat. 16 Geo. 2. c. 11. § 26, makes out a commission (*b*) to the person so elected, affixing thereto the common seal, and signing the commission. A penalty (*c*) of £500, six months imprisonment, and disability from office, is by the last mentioned clause imposed upon the clerk, in case of his neglect or refusal herein, or in case of his making out a commission to a person who has not the majority.

App. clxix. clxx.

Person chosen by majority to receive a commission, &c. made out by common clerk.

Penalty on him for neglect, &c.

Any person not the common clerk of the borough, taking upon himself to act, and making

App. clxx. Penalty on any other than the common clerk acting as such at the election of delegate.

(*a*) See the stat. 22 Geo. 3. c. 41. App. among the statutes relating to disqualifications of electors.

(*b*) For the form of a com-

mission to a delegate, see *Appendix*, cxcvii.)

(*c*) § 39. of the act would also make it perjury in him to take the oath in § 35. falsely.



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out a commission for any other person than the person chosen as above, is, by § 27, liable to a penalty of £500.

Application  
thereof.

The penalties, in both these instances, are given to the person elected by the majority, to be by him recovered according to the directions of the act.

App. clxxii.  
clxxiii.  
Commission  
necessary.

By virtue of these proceedings, and of the commission so made out to him, the delegate becomes entitled to vote at the ensuing election of a burgess; and by the stat. 16 Geo. 2. c. 11. § 30 and 32, the votes only of persons producing such commissions are to be allowed as legal votes at such election (*a*).

*Quære*, whether delegate declining to act another can be chosen?

It is an important question, whether, when a borough has once chosen a delegate, in the event of his death or declining to act, another can be chosen in his stead (*b*).

2 Doug. 181.  
(*Ante*, 422.)  
At all events  
the substituted  
delegate can-

The case of *Wigton*, &c. 1775, decides that when a delegate has been chosen, and has accepted the commission, and afterwards decline

(*a*) The statute 16 Geo. 2. c. 32. has a provision whereby persons not having commissions made out, may enter their claim to vote, *Appendix*, clxxiii.

(*b*) Mr. *Wight*, 377, sug-

gests the propriety of granting a commission as delegate to two persons, one failing another; but *quære*, how would the precept warrant such proceeding?



to act, if another can at all be chosen, it can only be with the same preliminary steps as in any other case: in that case, on the day of the election of a burgess, a letter was presented to the council from the delegate for *New Galloway*, (who had been duly chosen and had accepted the commission), declaring his resignation, and desiring them to choose another in his room, at the same time transmitting to them his commission. Another delegate was accordingly chosen forthwith. The majority of Mr. *Norton*, the sitting member, depended upon the legality of the election of the substituted delegate; Mr. *Dashwood*, who, in the event of such election being illegal, would have had the majority, petitioned; and the committee decided in his favour.

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not be chosen without the same preliminary steps as in other cases.

35 Journ. 219.

It is to be observed, that the whole power of election is devolved upon the delegate; that he may vote for whom he pleases; and is neither bound to receive, nor to follow, any instructions from his constituents (a).

2 Doug. 186. Authority of delegate when chosen, independent of his borough.

(a) Lord *Glenbervie* observes, that although the delegates are not in the nature of proxies or attornies, but are rather to be considered as men whom their respective boroughs judge best qualified to choose a member fit to represent the district, and in such choice are entirely independent of their constituents; yet it is said, that the first instance since the union of a delegate voting contrary to the sense and wishes of his borough, happened at the general election in 1774. See 2 Doug. 216.



## CHAPTER V.

## OF RETURNING OFFICERS.

SECTION 1. *Who are the proper returning officers at the different sorts of election, and of such as are annually elected.*

SECTION 2. *Of returning officers de jure or de facto.*

SECTION 3. *Of persons not being returning officers presuming to act, or joining with the proper officers in acting; and whether the proper officers declining to act, or being interrupted, other persons may act.*

SECTION 4. *Of the course of proceeding where there are adverse claims to be returning officer.*

SECTION 5. *Of a vacancy in an office, whereto the return of the writ or precept mediately or immediately belongs.*

SECTION 6. *Of the oath to be taken by returning officers; and of their general duty, how far ministerial or judicial.*

SECTION 7. *Of the responsibility of returning officers for the due execution of their duty.*

SECTION 8. *Scotland.*

SECTION 9. *Ireland.*

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HAVING seen in what manner the writs and precepts are respectively to be made out and directed, and that they are in each case



## Sect. 1.

to be delivered to the proper officer, having the execution of such writ or precept, we shall now inquire who such proper officer may be, and examine the general outline of his duty, reserving the more minute consideration of the several branches of such duty, for those parts of the subject with which they are most properly connected.

At elections for counties, the officer having the immediate execution of the writ (or in other words, the returning officer) is the sheriff.

At elections for counties, the sheriff is the returning officer.

At elections for cities, towns, or boroughs, being counties of themselves, and for other places, the execution of the writ or precept is imposed upon a variety (a) of persons, such as sheriffs, lords or ladies of manors, stewards, mayors, bailiffs, port-reeves, constables, and the like, who are respectively the returning officers, according to the

At other elections, various persons returning officers;

(a) It was formerly a subject of frequent discussion, at borough elections, whether the return should be made by the presiding officer of the borough or by the electors; but the statute 7 & 8 W. 3. c. 25. so decidedly speaks of the officer, that all doubts upon that head must have ceased. (*Ante*, 347.)

This point was agitated in the case of *Bletchingley*, 22d March, 1623, Glanv. 29. 37. 1 Journ. 745, and in several cases of the 27th April, 1660, viz. *Abingdon*, *New Windsor*, *Malden*, *Okehampton*, *Beere Alston*, *Tavistock*, *Devizes*, *Old Sarum*, 8 Journ. 3, and also in many other cases.



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constitution  
of the place.

Not necessary  
that returning  
officer should  
be an elector.

Title to act as  
returning offi-  
cer depends  
upon local cir-  
cumstances.

ing to the constitution of the several places whereat they are to preside (a).

It is by no means necessary that the returning officer should be an elector; and it frequently happens that he is not so, where it is the duty of a corporate officer to make the return, and where the right of voting does not depend upon corporate franchises (b).

As the questions which have arisen as to title to act as returning officers, have turned for the most part upon circumstances of a local nature, and therefore the decisions afford no universal principle, it would be superfluous to enter into the particulars of such cases.

Any observations, however, arising therefrom,

(a) See Heyw. Bor. El. (1 Ed.) 54.

In most instances of cities, &c. being counties of themselves, the sheriff is returning officer, but in some it is otherwise; where the latter is the case, a precept is made out from the sheriff to the returning officer. Sometimes, where the office of returning officer is vested in more persons than one, by a kind of legal figure they are called "the returning officer;" in the singular number. Thus, in the case

of *Southampton*, 3d April, 1735, the house resolved, "That the mayor and bailiffs of the town and county of the town of *Southampton* are the returning officer for the said town and county." 22 Journ. 445. 449. So the two sheriffs of *London* are called the sheriff of *Middlesex*, 4 Doug. 91. 150. See also the case of *Taunton*, post, 448.

(b) This is the case at *Abingdon*, *Reading*, and many other places. Heyw. Bor. El. (1st edit.) 81, 82.



which can in any way be generally useful, will be adverted to.

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The best general rule, whereby to discover who is the proper returning officer, is, that the return is to be made by him to whom the instrument, under which the election is immediately holden, is directed.

Heyw. Bor.El. (1st ed.) 57. Who returning officer, to be ascertained by direction of writ or precept.

But it should seem that this rule must be taken with the qualification, that such precept must be properly directed, inasmuch as in the case of *Milborne Port*, 1st and 2d December, 1747, where the precept was directed to the bailiffs, the house resolved, "that the execution of the precept, &c. and the making of the return thereof, are only in the two sub-bailiffs of the said borough, or in one sub-bailiff of the said borough, if there are not two."

But if precept improperly directed, the house will look to the proper officers notwithstanding. 25 Journ. 456. 458.

And in several cases, which will be mentioned presently, the house has adopted the returns of the proper officers, although the precept has been directed and delivered to other persons (a).

(See post, sect. 4.)

For the reason before given, it is not here

(a) It is proposed to sub-join to that part of this work, which treats of the qualifications of electors, a table, setting forth who is considered to be the proper returning officer in each place, as well as in what description of persons the right of election is vested.



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proposed further to consider who may or may not be returning officers; a general provision, however, is to be attended to as applying to all cases, where it belongs to any officer or officers to preside at the election, and make the return, who ought to be annually elected.

The provision alluded to, is that of the stat. 9 Ann. c. 20. § 8. (a).

Returning officers who ought to be annually

That clause recites, that in divers counties, boroughs, towns corporate, and cinque ports,

(a) The stat. 9 Ann. c. 20. *An act for rendering the proceedings upon writs of mandamus, and informations in the nature of quo warranto, more speedy and effectual; and for the more easy trying and determining the rights of offices, and franchises in corporations and boroughs.*

§ 8. "And whereas in divers counties, boroughs, towns corporate, and cinque ports, where the mayor, bailiff, or other officer or officers, to whom it belongs to preside at the election, and make return of any member to serve in parliament, ought to be annually elected, the same person hath been re-elected into such office for several years successively, which hath been found inconvenient:"

"be it enacted and declared, by the authority aforesaid, that no person or persons, who hath been, or shall be in such annual office for one whole year, shall be capable to be chosen into the same office for the year immediately ensuing; and where any such annual officer or officers is or are to continue for a year, and until some other person or persons shall be chosen and sworn into such office, if any such officer or officers shall voluntarily and unlawfully obstruct and prevent the choosing another person or persons to succeed into such office at the time appointed for making another choice, shall



where the mayor, bailiff, or other officer or officers, to whom it belongs to preside at the election, and to make return, of any member of parliament, ought to be annually elected, the same person had been re-elected into such office for several years successively, which had been found inconvenient; it then enacts and declares, that no person or persons having been in such annual office for one whole year, shall be capable to be chosen for the same office for the year immediately ensuing.

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elected, not to be chosen for two succeeding years.

And by the same clause, where any such annual officer or officers is or are to continue for a year, and until some other person or persons shall be chosen and sworn into such office, a penalty of £100, to be recovered as therein directed, is imposed upon such officer or officers,

Penalty on such officers obstructing election of persons to succeed them, in cases where they are to continue for a year, and until successors chosen.

“forfeit one hundred pounds  
“for every such offence, to be  
“recovered, with costs of  
“suit, by such person as will  
“sue for the same in any of  
“her majesty’s courts of re-  
“cord before mentioned \*, by  
“action of debt, bill, plaint,  
“or information, wherein no

“essoins, protection, or wager  
“of law, shall be allowed, nor  
“any more than one impar-  
“lance; one moiety thereof to  
“her majesty, her heirs and  
“successors, and the other  
“moiety to him or them that  
“will sue for the same.”

\* Courts of queen’s bench, sessions of counties palatine, and great sessions in *Wales*. See § 1. of the act.



## Sect. 1.

voluntarily and unlawfully obstructing and preventing the choosing another person or persons to succeed into such office, at the time appointed for making such choice.

9 Ann. c. 20.  
§ 8, construed  
only to extend  
to corporate  
officers.

In the construction of the above statute, it has been holden, that its operation is confined to corporate officers; and upon this ground, the court of king's bench, in the case of *The King v. Richardson*, E. T. 48 Geo. 3. decided that the port-reeve of the borough of *Penrhyn*, who is the returning officer, and who is elected at a prescriptive court-leet, was not within the meaning of the act (*a*).

9 East. Rep.  
469.

(*a*) The question in that case arose upon a point of pleading, namely, whether, under the above statute, and that of the 32 Geo. 3. c. 58. § 1, the defendant could be allowed to plead double, but the decision of the court is founded upon the general construction of the act. See the report, and cases there cited, 9 East. 469.

arts.



## Sect. 2.

SECTION 2. *Of returning officers de jure, or de facto.*

WHEREVER it appears that an election of a member of parliament has been fairly made, there will be every inclination in the house of commons to support such election; and upon this principle, the proceedings of the person in possession of the office of returning officer, will be adopted, even though his title to the office, to which that duty is attached, be questionable (*a*).

*Winchelsea*, 28th May, 1624. The mayor was reported by the committee of privileges to be an intruder; but nevertheless the election was holden good, by the committee and by the house.

1 Journ. 798. The returning officer who presided at the election an intruder, the election good notwithstanding.

*Winchelsea*, 9th and 10th January, 1666. The mayor had not taken the sacrament of the Lord's Supper, according to the rites of the church of *England*, within a year next before

8 Journ. 673, 674. Returning officer who ought to have taken the sacrament within a year

(*a*) In the case of *The King v. Davie*, lord Mansfield said, "How many instances do we recollect of mayors acting as returning officers, after there has been judgment of *ouster* against the mayor under whom they derived their title?" 2 Dougl. Rep. K. B. 589, cit. Heyw. Bor. El. 64.



## Sect. 2.

before his election, according to the 13 Car. 2. c. 1. § 12, not having done so, the election whereat he presided holden good notwithstanding.

(See the case of Orford, post, 453.)

the election; and the committee, upon perusal of the clause in the act of parliament for regulating corporations (a), were of opinion, that the return made by the mayor, of the election of Mr. *Austin*, the sitting member, was not good; and that the election was void. When the matter came to be debated in the house, the house disagreed with the committee, and it was resolved that Mr. *Austin* was duly elected.

16 Journ. 480.

*Portsmouth*, 3d February, 1710. In this

(a) The stat. 13 Car. 2. c. 1. § 12. renders persons ineligible to such office who shall not have, within one year before their election, taken the sacrament of the Lord's Supper, according to the rites of the church of *England*. See *The King v. Smith*, 3 T. R. 573. *The King v. Brown*, 3 T. R. 574. *The King v. The Corporation of Bedford*, 1 East. R. 79. *The King v. Hawkins*, 10 East. R. 211, ante, 266.

In the *Plympton* case, 27th October, and 5th December, 1691, the mayor was alleged to be an usurper; but the petition was withdrawn before any resolution made. 10 Journ. 540. 574. In those of *Clitheroe*, 2d February, 1693, 11 Journ. 77, and *Milborne Port*, 18th June, 1717, 18 Journ. 596. 619, the titles of the returning officers were questioned, but the facts are not sufficiently narrowed to afford any certain inference from the decisions. In the case of *Devizes*, 27th November, 1708, serjeant *Webb*, by his petition, alleged that Mr. *Diston*, the sitting member, prevailed upon the under-sheriff to deliver his precept to *I. E.* as mayor (although he was not so), who, at the instigation of Mr. *Diston*, executed it, and returned him and Mr. *Methuen*, although not legally chosen; he further alleged, that he (being, as recorder, chief officer in the borough, in the vacancy of a mayor) and others of the common council, demanded the precept, and protested against such proceedings. The petition was ordered to be heard on the 28th April, but parliament was prorogued in the interval, and the petition was not renewed. 16 Journ. 22. 209.



case also, as in the last, it appeared that the mayor had not taken the sacrament within a year before his election; notwithstanding which, the proceedings before him were recognized, inasmuch as the house did not avoid the election, but seated the petitioners, sir *James Wishart* and sir *William Gifford*, who had the legal majority of votes, instead of sir *Charles Wager* and sir *John Jennings*, who had been returned; and in this case, that of *Winchelsea*, 1666, (Ante, 443.) above mentioned, was cited.

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Same point.

In the case of *Bodmin*, 1792, it was alleged, that there was a radical defect in the election of the mayor (a), who had acted as returning officer, and as such he had returned sir *John Morshead* and Mr. *Wilbraham*; but the counsel for the petitioners, sir *James Laroche* and Mr. *Sullivan*, considered the law to be so completely established, that the return by an officer *de facto* was sufficient, that they declined to maintain a contrary argument. And the petition was voted frivolous and vexatious.

2 Fras. 236.  
Same point.

(a) The defect in the election of the mayor was the non-observance of some requisites of the charter with respect to such election.



## Sect. 3.

SECTION 3. *Of persons not being returning officers, presuming to act, or joining with the proper officers in acting; and whether the proper officers declining to act, or being interrupted, other persons may act.*

1. IN any case where it shall appear that persons having improperly acted as returning officers, have wilfully done so; although the validity of the election may not be affected by it, nevertheless such persons will be liable to censure and punishment by the house.

And in several instances, where the precept has been executed by an improper person, the officer having the execution of the writ, has been made accountable not only for the misdelivery of the precept, but also (as will be seen hereafter) for receiving a return thereto, which had not been executed by the proper officer.

Glanv. 29. 32.  
41.

1 Journ. 745.  
A sitting member who had delivered a return to a precept into the crown-office,

In the case of *Bletchingley*, 22d March, 1623, sir *Myles Fleetwood* and Mr. *Hayward* were duly chosen by the burgage-holders on the 22d January, the day appointed for the election; and they were returned to the sheriff by inden-



ture accordingly: on the 8th February, the bailiff of the borough proclaimed, that on the next day, the burgage-holders, and all the rest of the inhabitants, should meet, to elect burgessees: thirty of the inhabitants met, and chose sir *Myles Fleetwood* and Mr. *Lovell*, and sealed an indenture between themselves and the sheriff, which indenture was delivered by *Lovell* himself into the crown-office, without the sheriff's consent, who never sealed a counterpart thereof, nor ever accepted it. The house ordered, that Mr. *Lovell* should, for such his offence, be committed prisoner to the Tower during the pleasure of the house; and not to be enlarged till he had made his submission, and acknowledged his fault upon his knees at the bar of the house; and that he should not be elected for the said borough (*hac vice*) (a).

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without the consent of the sheriff, who had not executed a counterpart, another returnal- so having been made to him, committed to custody, and disabled to be elected *pro hac vice*.

In the *Minchhead* case, 8th and 9th January, 1721, where the house had resolved (13th June, 1717), that the constables were the proper officers to whom the precept ought to be delivered, and to whom the execution belonged, notwithstanding which, two other persons had

19 Journ. 701, 705.

18 Journ. 562. 592.

(Ante, 406.)

Persons improperly acting as returning officers, committed to custody.

(a) See *ante*, 123 to 126. of the house could not have prevented the electors from choosing Mr. *Lovell*.  
From what is there stated, it should seem that such order



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(See post, sect. 8.)

acted as such ; a motion was put and carried, “ that *John Vicary* and *Joseph Sherry*, having presumed to act as the returning officer at the late election, &c. in defiance of the resolution of this house, are guilty of a high crime and misdemeanor.” And they were severally ordered into the custody of the serjeant at arms.

2. With respect to persons not being returning officers, joining with the proper officers in acting as such :

(Ante, 443.)

Upon the principle before mentioned of supporting the election, if fairly made, the circumstance of such persons joining in holding the election, or making the return, has been considered not to avoid the election.

1 Peck. 406.  
421. 432.  
58 Journ. 382.  
Election hold-  
en good, not-  
withstanding  
that the con-  
stables, not be-  
ing returning  
officers, acted  
jointly with  
the bailiffs,  
who were so.

In the *Taunton* case, 1803, the bailiffs of the borough, and the constables, jointly acted as returning officers, and made the return ; whereas the constables ought not to have interfered : the committee held the sitting members duly elected, although they at the same time reported, “ that the bailiffs of the borough of *Taunton*, appointed at a court-leet held annually in and for the said borough, are the legal returning officer of the said borough.”



3. As to whether, the proper officers declining to act or being interrupted, other persons may act:

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There are cases, but not of recent date, in which the returning officer declining to fulfil his duty in taking the poll, the electors have voted before a constable, or even before a private person, and their votes, as well as the election, have been holden good.

*Quære, whether, when the proper officer declines to act, other persons may hold the election?*

Such were the cases of *Cricklade*, 1st April, 1689, and of *Liverpool*, 5th, 19th, 21st, and 24th March, 1729-30.

10 Journ. 72, 73.  
21 Journ. 476. 506. 508. 514.

But in the case of *Wells*, 15th and 20th January, and 19th February, 1766, where the poll was taken by one *Keate*, who was not the proper returning officer, evidence was offered to shew the refusal of the mayor to go into the borough to *receive the precept*, whereupon *Keate* proclaimed the election and took the poll; but the house refused to admit the poll so taken by *Keate* to be produced.

30 Journ. 456. 466. 595.  
(S. C. post, 455.)

So in the *Cricklade* case, 1775, where the returning officer, upon an appearance of riot, (as to the extent of which there was contradictory evidence), closed the poll, and positively refused to renew it, and votes were thereupon

1 Doug. 293. 299.



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taken before a constable, the committee resolved that the constable's poll should not be given in evidence (*a*), and that parole evidence should not be admitted to prove what persons polled before him.

SECTION 4. *Of the course of proceeding where there are adverse claims to be returning officer.*

ALTHOUGH if the return be regularly made, the house will not usually inquire into the title of the officer making the return, yet, if it becomes necessary, it will make such in-

(*a*) It is to be observed, that no other person than the returning officer has any authority under the statutes to administer the bribery oath, which, by the stat. 2 Geo. 2. c. 24. (see *Appendix*, xiii.) may be required to be taken by every voter; and this was much relied upon in the argument against the validity of the constables' poll, in the *Cricklade* case of 1775. 1 Doug. 293.

That the presiding officer or officers means the regular returning officer or officers, sufficiently appears from the tenor of the act, is remarked

by Mr. serjeant *Heywood*, Co. El. chap. 8. referring to § 2. and 3. The same observation arises from the provisions with respect to the oath which may be required to be taken by freeholders.

The 2 Geo. 2. c. 24. took effect 24th June, 1729. The writ in the *Liverpool* case (referred to *ante*, 449), which was moved on a vacancy, was ordered on the 14th May of that year, (Journ. 21. 376.) so that the election probably happened before the act was to take place. 1 Doug. 313, note to the *Cricklade* case.



quiry; nor will it suffer its jurisdiction to be questioned in this particular.

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Many cases of this sort have occurred, where returns have been made by different persons claiming to be returning officers, either in respect of different offices, or different claims to the same office.

In the *Minehead* case, 21st and 23d May, 18 Journ. 563. and 13th June, 1717, two precepts having been sent by the sheriff (by way of precaution), two polls were taken, and two returns made; the constables and lord of the manor petitioned to be heard as to the right of the constables to preside at elections; the counsel against the petition of the constables, objecting to their proceeding upon their petition, the question who was the returning officer being "a matter of private property, triable at law, and that the house never took upon them to determine such a question;" the counsel having been ordered to withdraw, and again called in, were acquainted by the speaker, by order of the house, that the house would not suffer them to dispute the privileges of the house.

565. 592.  
Where necessary, the house will inquire who are the proper returning officers, and will not admit any objection to its jurisdiction therein.  
(S. C. ante, 405, n.)

Where it becomes necessary to decide between different persons which is the proper returning officer, In cases of adverse claims to be returning



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officer, that question will be decided in the first instance.

officer, this question is usually decided in the first instance, and the return by the proper person is thereupon treated as the legal one (*a*).

There have been several cases, wherein adverse claims of this nature have been considered; but in some of them the grounds of decision are not particularized; in others, the facts which would connect them with this head, are so intermixed with other matter, as to prevent any definite conclusion being drawn therefrom (*b*).

In others again, the circumstances whereupon they have been determined have no re-

(*a*) In the case of *Milborne Port*, 1775, where there were three polls taken by different persons, the committee resolved one of them to be illegal, and that the other two appeared so complicated together that they thought it their duty to go upon the merits of the election, without previously deciding between them, which they accordingly did. 1 Doug. 97. 116, 117.

(*b*) See *Truro*, 2d February, 1688, 10 Journ. 16. *Dartmouth*, post, 461, and 13 Journ. 203. *Dartmouth*, 13th February, 1700. Ibid. 328. *Banbury*, 13th March, 1700, Ib. 402. *Dartmouth*,

28th May, 1701, Ib. 579. *Camelford*, 8th May, 1711, 16 Journ. 643. *Okehampton*, 1771, 1 Fras. 69.

*Clitheroe*, 2d February, 1693. The returning officer who had returned the sitting member was a minor; and although he had demanded to be sworn, he had never been sworn, and his election as bailiff was disputed: the committee resolved the sitting member to be duly elected, but the house disagreed, and avoided the election; though upon what ground is uncertain, as there was also evidence of corrupt practices. 11 Journ. 77.



ference to any other than the particular place in respect of which the discussion has arisen (a).

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In cases where there are adverse claims to the office in question, the house will not adopt the election holden by the proper officer against that holden by the intruder, unless proper steps are taken by such officer, at the time of the election, to make it publicly known that the proceedings before him are the only legal ones, and that the adverse proceedings are consequently illegal.

*Orford*, 13th and 27th February, 1700, and 25th March, 1701. Two persons, viz. *Saunders* and *Hastings*, pretended each to

13 Journ. 327.  
359. 427.

(a) In the cases of *Bewdley*, 24th November and 8th February, 1708, 16 Journ. 10. 97. and 1st December and 19th December, 1710, 16 Journ. 408. 439, the question was, whether the bailiff under the old or the new charter was the proper returning officer. In the former they decided in favour of the new, but in the latter in favour of the old charter. A motion was upon the latter occasion made and agreed to, "that the charter, dated the 20th April, 1708, attempted to be imposed on the borough of *Bewdley*, against the consent of the ancient corporation, is void, illegal, and destructive of the constitution

of parliament;" and it was resolved, "that an address should be presented to her majesty, desiring her to give directions for repealing the said charter," &c. S. C. post, 456.

In the case of *Peterborough*, 1st February, 1727, the petitions of *James Pix*, bailiff of this city, and of the dean and prebendaries of the cathedral church, complained, that the dean and prebendaries, by grant from *Henry the eighth*, are lords of that city, in right of their church, and have, by their appointment, a bailiff, to whom the sheriff of *Northamptonshire* used to direct his precept;



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Where two persons adversely claiming to be returning officer, notice was given to the sheriff that one was proper officer, and expected the precept, and also to the other not to intermeddle; although it was insisted that he, in respect of whom, and to whom such notice had been given, was not the proper officer;

the office of mayor. Notice was given to the sheriff that *Hastings* was the mayor and expected the precept, and also to *Saunders* not to meddle therewith; and a copy of a verdict which had been given in a trial at bar, (and which was alluded to in the petition as decisive against the title of *Saunders*), was left both with the sheriff and with *Saunders*. Elections were severally holden, and returns made by *Saunders* and by *Hastings*, the former returning the sitting members, the latter the petitioners. The petitioners' counsel insisted that they could make it appear that *Saunders* was not the lawful mayor. To this point the committee did not think fit to hear them.

yet the other not having giv-

But it not being pretended that public notice

which bailiff, together with the members of the said church, and principal citizens, did make the elections and returns; that notwithstanding such usage, the sheriff directed his precept to *Robert Smith*, bailiff of the hundred of *Nassaburg*, and caused it to be delivered to him, and not to *Pix*, who demanded the same. There was a return made by *Pix*, which the sheriff refused to annex to the precept, and another by *Smith*, which he did annex.

Upon the 9th of April, upon hearing the merits, the house resolved, that "the execution of the precept," &c. "and the making the return thereof, are in the bailiff of the said city, appointed by the dean and chapter of the cathedral church of *Peterborough*." The house ordered the return made by *Smith* to be taken off the file, the same not being signed by the proper returning officer; and that signed by *Pix* to be annexed. 21 Journ. 26. 127.



had been given at the time of the said election by *Hastings*, nor that he ever had the precept; and it also appearing that no person protested against *Saunders's* proceedings while he was in the town-hall, or any one demanded a poll of him, the committee resolved the sitting members to be duly elected; and the house (after a motion to re-commit the merits had been negatived) agreed.

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en public notice at the time of the election, nor having had the precept, and no one having protested against the proceedings of the former, an election by him holden good.

*Bossiney*, 9th and 11th December, 1741. *Robins*, the mayor, petitioned, complaining that Mr. *Fortescue*, the sheriff, caused the precept to be delivered to the late mayor, who, notwithstanding that he, *Robins*, demanded the precept of him, proceeded to election, and returned the sitting members; that the petitioner, who was the proper officer, also proceeded to election, and returned Mr. *Sabine* and Mr. *Tower*, who were duly elected; but that the sheriff refused to receive his return. Upon proof of the above circumstances, the house ordered the return made by the petitioner to be annexed to the writ, he being the proper returning officer of the said borough.

24 Journ. 13. 17, 18.

Where the precept was delivered to the late mayor, but the then mayor demanded it of him, notwithstanding which the former proceeded to election, as did also the latter, the election taken before the latter holden good.

The case of *Wells*, 15th and 20th January,

30 Journ. 456. 466, (ante, 449.)



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Same point.

1766, is in circumstances similar; and the house came to the like resolution.

16 Journ. 408.

439, *ante*, 453, n.

19 Journ. 704,

705. *ante*, 447.*Ante*, 453, n.

Where precept delivered to another than the proper officer, the latter may hold the election notwithstanding.

It appears from the cases of *Bewdley*, 1st and 19th December, 1710; *Minehead*, 8th and 9th January, 1721; as well as from those of *Peterborough*, 1st February, 1727, and of *Bossiney* and *Wells*, just mentioned; that where the sheriff has delivered his precept to an improper person, the legal returning officer may proceed to an election; and that the return signed by him, and tendered to the sheriff in due time, notwithstanding that his adversary was in possession of the precept, will be considered as the legal return, and annexed as such to the writ and precept.

**SECTION 5.** *Of a vacancy in an office, whereto the return of the writ or precept mediately or immediately belongs.*

IT may happen, either that there may be a vacancy in an office, whereto the writ is directed, and from whence a precept is issued thereupon, or in an office having the immediate execution



of the writ or precept; and this may be the case either at the time of issuing such writ or precept, or may become so between that time and the time of the return.

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It is therefore an important question how such vacancy would affect the election proceedings.

With respect to a vacancy in an office whereto the writ is directed in the first instance:

1. In the case of the counties palatine, and in that of the cinque ports, the writ is uniformly directed to more than one officer; it should seem, therefore, that either of the persons to whom it is so directed, has an independent authority under the writ, and that, in the event of a vacancy in the office of one of these persons, it might be executed by another.

Where writ directed to more than one person, in the disjunctive, it seems that if the office of one be vacant, the other may act.

2. In the case of a vacancy in the office of high sheriff of a county, by death, the general provision for the performance of all the duties of the office would comprize those relating to parliamentary elections.



## Sect. 5.

Sheriff of a county dying before his office is expired, under sheriff to act.

By the statute 3 Geo. 1. c. 15. § 8. (a), in the event of the death of any high sheriff of any county in *England* or *Wales*, before the expiration of his year, or before he is lawfully superseded, his under or deputy sheriff is, nevertheless, to continue in office, and to execute all things belonging thereunto, in the name of the deceased sheriff, until another is appointed and sworn, and to be answerable for

(a) The stat. 3 Geo. 1. c. 15. "*An act for the better regulating the office of sheriffs, and for ascertaining their fees, and the fees for suing out their patents, and passing accounts.*"

§ 8. "And whereas great inconveniencies have arisen by the death of sheriffs during the time of their sheriffalty, be it enacted, by the authority aforesaid, that if any high-sheriff of any county of *England* or *Wales* shall happen to die before the expiration or determination of *this*\* year, or before he be lawfully superseded, in such case the under-sheriff or deputy sheriff by him appointed shall nevertheless continue in his office, and shall execute the same, and all things belong-

ing thereunto, in the name of the said deceased sheriff, until another sheriff be appointed for the said county and sworn," (as directed in the act); "and the said under-sheriff or deputy sheriff shall be answerable for the execution of the said office in all things, and to all respects, intents, and purposes whatsoever, during such interval as the high-sheriff so deceased would by law have been if he had been living; and the security given to the high sheriff so deceased, by the said under-sheriff, and his pledges, shall stand, remain, and be a security to the king, his heirs and successors, and to all person's whatsoever, for such under-sheriff's due performance of his office, during such interval."

\* So in Ruffhead's Stats.; but *quære*, whether it ought not to be "*his*," instead of "*this*?"



the execution of the office as the deceased high sheriff would have been, had he been alive.

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This statute, it is to be observed, applies to the case of a vacancy by death only; a vacancy from any other cause is not thereby provided for.

3. As to a vacancy in the office of a sheriff of a city, &c. being a county of itself:

This case involves the preliminary question, of how far such case is within the operation of the statute of 3 Geo. 1. c. 15. (a).

Sheriffs of cities, &c. being counties, dying, it seems the under sheriff should act.

(a) The question would be, whether the term of high-sheriff of any county, in § 8, would reach the case of sheriffs for cities, &c. being counties? There are parts of this act which seem to contemplate a construction which would comprise them.

The § 10. recites, "that the office of under-sheriff, and other offices and places in the disposal of the high-sheriff, have of late years been frequently sold," &c. and, for remedy, enacts, "that it shall not be lawful to or for any person," &c. "to buy, sell," &c. "the office of under-sheriff," &c. &c. "or any other office or place pertaining to the office of high-sheriff of any county or shire in *England* or *Wales*,

"or to contract for, promise, or grant, for money," &c. "the said office," &c. &c.

The language of § 21. appears to consider § 10. as reaching the case above in question; that section (21.) which evidently has reference to § 10. provides, "that this act, or any thing therein contained, shall not extend to the sheriffs of *London* and *Middlesex*, the county palatine of *Durham*, the county of *Westmoreland*, or to the sheriffs of any city being a county of itself, or to any of them, as to their placing in, or disposing of any of the offices, places, or employments, of their under-sheriffs, county-clerks, bailiffs, or other officers, or their continuance therein."



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Should it be considered to be so, which, from the general tenor of the act, is most probable, the event is then provided for in the manner before stated.

Should the construction of the act be holden otherwise, the case would identify itself with that of a vacancy in the office of any returning officer under a precept; and upon that hypothesis, reference may be had to what is about to be stated respecting the latter.

14 Journ. 88, 89, *ante*, 367. In one case of death of one of two returning officers, whereby the time elapsed for taking steps for election, writ was superseded.

In the case of *Gloucester*, 19th December, 1702 (before mentioned), upon the death of one of the sheriffs, after the receipt of the writ, which occasioned the proper time to elapse for taking steps in order to the election, the house only ordered the writ to be superseded, and another to be issued.

4. As to a vacancy in the office of a returning officer under a precept:

Cases of such vacancy, at the time of issuing the writ or precept, do not seem to be in any way provided for (*a*).

(*a*) In the case of *Devizes*, 27th November, 1708, (*ante*, 444, n.) where the petition of serjeant *Webb* complained that the precept had been delivered to a person who was not



Such cases, however, and those where there has been no known or fixed returning officer, seem in principle analogous; and in the latter, it appears from the resolutions laid down in the case of *Bletchingly*, that any elector may act.

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It seems as if, in case of a vacancy in the office of returning officer under the precept, any elector might act, at least for such purpose as that of giving notice of election.  
Glanv. 37, 38.

It is there said, that "where there is no known or special officer to this purpose, within the borough, and the electors are many, and all in equal degree of right and interest, every one of them is a lawful officer to this purpose, to warn such of his fellows as he thinks good, to meet at such time and place as they appoint."

There have been instances of such offices becoming vacant after the precept has been issued; but the house has not adopted any fixed course thereupon.

*Dartmouth*, 9th January, and 12th February, 1699. Mr. *Davy*, high sheriff of *Devon*, by his petition, set forth in substance, that, pursuant to the writ, he directed and sent his precept to the mayor and burgesses of *Clifton, Dartmouth*, and *Hardnesse*, for electing a burgess, &c. and delivered the same to Mr. *Whitrow*, the mayor;

13 Journ. 101.  
203, 204.

In a case of a vacancy of the returning officer under the precept, after notice of the election, but before it took place, in consequence of which two elec-

mayor, the mayoralty was vacant, (16 Journ. 22.) but the

petition never came to a hearing.



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tions were  
holden by dif-  
ferent persons,  
the house de-  
clined giving  
any particular  
directions to  
the sheriff.

that he proclaimed the day for the election, but died before the day appointed; that the burgesses and freemen, notwithstanding, proceeded to election; that some of them returned Mr. *Herne* by one indenture, and others returned Mr. *Holt* by another indenture: he further prayed the direction of the house, whether both, or which of the two indentures, he ought to return to the clerk of the crown; or whether he could return either of them, they not coming to his hands by the proper officer, who had so died after the proclamation made, before the election.

The house did not, in consequence of this application, give any particular directions as to what course should be pursued; but ordered, "That the sheriff be directed, according to his duty, to make a return of his writ." He thereupon forwarded both returns (a) into the crown office.

But the house (though upon what ground is not stated), resolved, that Mr. *Herne* and Mr.

(a) Each noticed the death of the mayor; the one was expressed to be, "by several of the burgesses;" the other, "by several of the magistrates " and free burgesses," and to be "under the common seal." These matters were opened by the counsel, but no witnesses were examined.



*Holt*, who had been returned, the one by the one indenture, the other by the other, were respectively not duly returned.

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It seems that if a change of such officer fairly takes place, in consequence of death, or of expiration of the period of office, pending the election proceedings, the person succeeding to the office should complete what remains to be done (*a*), as appears from the following cases (*b*).

A change of officer taking place pending the proceedings, it seems the successor may act.

*Bridgenorth*, 20th February, 1609, which was before there was any provision to enable the

1 Journ. 397.  
Where there is a change of re-

(*a*) Lord *Glenbervie* speaks of such having been the practice, and that no objection has been made to it. 1 Doug. 138. *Milborne Port*, (n. B.)

(*b*) The above reasoning goes upon the presumption of the possibility of supplying the place of a returning officer on the moment; but there may be places where, from the length of notice necessary previous to such appointment, or from various other reasons, this may be impossible; and for such cases there seems no provision in the law.

It is not easy to anticipate an incident which would create greater difficulty, in a place where the voters are numerous,

than the death of a returning officer, after the commencement of the poll, or during a scrutiny, there being no means of immediately supplying his place; and should such an occurrence take place at a general election, the difficulty would be increased, from the circumstance that the house of commons would not be sitting, consequently there could be no directions from above. The contingency might possibly be provided for by a regulation, that in every precept there should be a direction, not only to the usual returning officer, but also to one or two persons of known respectability at the place in ques-



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turning officer  
after issuing  
writ, it seems  
new officer  
may act.

under-sheriff to act, there is the following entry: "A writ before the session to the sheriff; the sheriff dies before the election." Resolved, "The new sheriff to return; the bailiff cannot."

10 Journ. 300,  
301.

Same point.

*Dorchester*, 3d and 4th December, 1689.

On complaint that the writ for electing a burgess for this borough was not executed, it was ordered, that Mr. *Cooper*, the late under-sheriff, and Mr. *Atwell*, the present under-sheriff, of the county of *Dorset*, should attend, to give an account of the reason thereof.

When they had been examined, it was ordered, that the mayor of *Dorchester* should forthwith proceed to execute the precept sent to him by the *late* sheriff.

1 Doug. 97.  
103. 136.

A return made  
by a person  
who was re-

Nor is the above proposition shaken by the resolutions in the case of *Milborne Port*, 1775, where the return made by a person who was

tion, for the propriety of which nomination the sheriff to be responsible; it being provided, at the same time, that the persons to whom the instrument was so directed, in addition to the returning officer, should only act in the event of his death, or incapa-

city from illness. Another mode would be, in the event of a vacancy of a returning officer, under a precept, to make the sheriff responsible for the execution of the precept. But it should seem that this deficiency in the law ought in some way to be amended.



one of the sub-bailiffs at the time of the delivery of the precept, was adopted, notwithstanding that new offices had been appointed between such delivery and the return; because, in that case, the substitution of the new officers was made under circumstances which rendered its legality very questionable.

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turning officer, at the time of the delivery of precept, adopted, notwithstanding a new appointment of officers before the election, such new appointment being made under circumstances of doubtful legality.

SECTION 6. *Of the oath to be taken by returning officers; and of their general duty, how far ministerial or judicial.*

EVERY returning officer is, by the statute 2 Geo. 2. c. 24. § 3, required to take and subscribe the oath therein, immediately after reading the writ or precept, which may be administered by a justice of the peace of the county or place, or any three electors.

Returning officer's oath.  
Append. xv.

The particulars of the duty of returning officers, are to be found under the respective heads to which they are applicable.

With respect to their general duty, it need hardly be observed, that the law exacts of every person who is placed in this situation, that his conduct shall be upright, consistent, and impartial; and that he shall, in all respects, act

Returning officers, not acting uprightly, impartially, and consistently, liable to censure and punishment by the house of commons.



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to the best of his knowledge and capacity; from which line, wherever he shall deviate, by lending himself to the views of particular candidates, or by making the colour and authority of his office subservient to private ends and purposes, the so doing will be highly criminal; and if brought before the house, he will not fail to incur both punishment and censure (a).

15 Journ. 55,  
56.  
Returning of-  
ficer publishing  
illegal bye-law,  
in order to in-  
fluence elec-  
tors, commit-  
ted.

*Norwich*, 6th December, 1705 (b). The mayor published an illegal bye-law, restraining any persons from voting except for freemen, for the purpose of influencing certain electors. The house committed him to custody.

2 Doug. 143  
172.

*Sudbury*, 1775 (c). The mayor distributed

(a) Several cases of misconduct of returning officers will be found under the different heads in this volume.

(b) The mayor, upon occasion of the election, published a bye-law made at an assembly in *Norwich*, 28th November, 1640, by which any one that should give his voice for any man not free, to be chosen citizen for the parliament, should forfeit to the use of the poor £5, or suffer imprisonment; the house resolved, that "*William Blythe*, esq. late mayor of the city of *Norwich*, by printing and publishing a pretended bye-law,

made in the year 1640, contrary to *magna charta*, in order to terrify the electors of the said city from free and impartial voting in the late election, &c. is guilty of an illegal and arbitrary proceeding." And for his offence, he was ordered into the custody of the serjeant at arms.

(c) Just before the election, the mayor had a thousand copies printed of an extract from the *Durham act*, (3 Geo. 3. c. 15.) containing the clause disqualifying freemen admitted to their freedom within the year, and mentioning the penalty of £100 on such per-



copies of the statute 3 Geo. 3. c. 15, setting forth the penalties therein imposed upon persons voting under certain circumstances, but omitting an exception therein, which it was material for the electors to know; and afterwards, by his own representation of the law, to persons inquiring of him, confirmed the statement of the act, so partially made, in such copies. The committee, having called in all the persons belonging to the borough, who were in attendance, by the chairman, in their presence, solemnly reprimanded him.

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Returning officer mis-stating act of parliament touching votes of electors, reprimanded.

The cases, also, of *Great Grimsby*, and *Mid-  
dleser*, about to be stated, afford instances of a similar nature. (Post 470.  
472.)

It ought to be observed, with respect to the general duty of returning officers, that it has

*Quære*, whether returning officer ministerial or judicial?

sous presuming to vote, but omitting the exception in favour of persons having an inchoate title, &c. He had himself caused such copies to be distributed among the persons claiming to be enrolled. Some of them taking the alarm, came to ask his opinion whether they might vote without incurring the penalty, and received for answer that they would certainly be liable to it if they presumed to vote, and if not able to pay, must go to gaol. After the committee had settled their opinion among themselves with regard to the merits of the election, before they communicated their determination to the house they ordered the mayor, and all the agents and persons belonging to *Sudbury* who happened to be in attendance, to be called in; and the chairman, by their direction, publicly reprimanded the mayor for his conduct at the election.



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been a point much agitated, whether it is wholly ministerial, or whether it is in any degree judicial.

There can be no doubt that, in those branches of their duty wherein the law has marked out a definite line, it is ministerial; but as regarding the two material branches, of deciding upon the capacity or incapacity of candidates, or upon the qualifications or disqualifications of electors, the subject requires some investigation.

As to the duty of returning officers, in deciding upon the capacity or incapacity of candidates, it is not within the province of any returning officer to judge thereupon, further than as far as will hereafter appear, when treating of the return; but, with respect to their duty in deciding upon the qualifications or disqualifications of electors, great doubts have been entertained.

It has been contended, on the one side, that returning officers are merely ministerial (*a*), with

(*a*) This has been inferred on the one side from the limited powers of returning officers at the poll, they having no power to administer an oath (for general purposes, ac-

cording to the case of *Bristol*, 20th December, 1680, 9 Journ. 684), or to examine evidence.

It has been contended also, that, from several statutory



respect to the admission or rejection of votes, and that wherever votes are legally tendered, and the persons proposing to vote, are willing to take such oaths as may be legally required of them, the returning officers cannot, upon any grounds, reject them.

On the other hand, it has been urged, that returning officers have the power to receive or reject votes tendered at the poll, according to their legality or illegality (*a*), of which such officers are to judge.

The language of the following cases, how-

regulations imposing the freeholders' oath, and from the penalty upon persons voting as freeholders, not having such freehold as is described in the oath, it is clear the legislature intended to make that the only test of qualification at county elections; nor does there appear to be any ground whereupon it can be said that the nature of the duty of returning officers in this respect is different at any other elections.

See the arguments in the *Middlesex* case, 2 Peck. 15.

See also the cases of *Berkshire*, 22d December, 1690, 10 Journ. 520. *Cambridgeshire*, 12th February, 1693, 11 Journ. 92.

See also the cases of *Hertfordshire* and *Surrey*, 16th January, 1695, 11 Journ. 393, 394, wherein it was holden that evidence ought not to be admitted to disqualify an elector as no freeholder, who swore himself at the election to be a freeholder.

See also *Old Sarum*, 11th Dec. 1705, 15 Journ. 60. Com. Dig. Viscount C. 4. Bul. N. P. 64. and *Heyw. Co. El.* 33. 472, where this doctrine is supported, and the cases are collected.

(*a*) It has been said, that if they have no such power, the freedom of election cannot be insured, inasmuch as any persons who are willing to take the oaths required, although



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ever, though not conclusive, is strongly in favour of the latter doctrine.

58 Journ. 13.

152.

*Great Grimsby, 1803.* The petition of Mr.

1 Peck. 59. 74. *Mellish*, who claimed that he ought to have been returned instead of Mr. *Loft*, contained a com-

Resolution  
against return-  
ing officer ad-  
mitting per-  
sons to the free-  
dom of a bo-  
rough, with a

plaint against the returning officer: whereupon the committee, after deciding that Mr. *Mellish* ought to have been elected, came to resolutions (a), censuring the returning officer, *first*,

in truth not entitled to vote, could not be excluded; that the stat. 2 Geo. 2. c. 24, in requiring returning officers to return such persons as shall to the best of their judgment, have the majority of legal votes, evidently contemplates a judicial character in them, and that the very essence of a scrutiny depends upon the same doctrine.

See the arguments in the *Middlesex* case, 2 Peck. 13.

See also 1 Com. 343, where Mr. justice *Blackstone* enumerates the duty in question as one of the *judicial* duties of the sheriff; and the cases of *Bedfordshire*, 28th June, 1715, wherein it was resolved, that the counsel for the petitioner should be admitted to give parol evidence as to a person's being no freeholder, who swore himself so to be at the election, (18 Journ. 190), and that of *Yorkshire*, 26th Febru-

ary, 1735, where a resolution passed to the same effect, after reference to several former entries on the journals. 22 Journ. 593, 594.

See also what is stated in sect. 7, with respect to the liability of returning officers to actions, at the suit of persons whose votes are improperly rejected, *post*, 476.

(a) "That it appears to this committee, that *John Simpson*, esq. the mayor and returning officer, &c. did, on the day previous to the election, hold a full court of mayor, aldermen, common councilmen, and burgesses of the said borough; at which court the said *J. S.* did unlawfully, and of his own authority, admit certain persons to the freedom of the said borough, to whom objections were stated, and did refuse to submit to the consideration and judgment of the alder-



with respect to his conduct previous to the election, in admitting persons to the freedom of the borough, of his own authority, although such persons were objected to, without submitting the objections to the aldermen, common councilmen, and burgesses, as he ought to have done, in conformity to a determination of a committee, reported to the house on the 11th April, 1693, and partially refusing to admit others, in the like manner; and, *secondly*, with respect to his partiality at the poll, in rejecting some votes which he ought to have admitted, and in admitting others which he ought to have rejected.

men, common councilmen, and burgesses of the said borough, the right of such persons to be admitted to their freedom, which, by the constitution of the said borough, as determined by a resolution of a committee of the house of commons, reported to this house on the 11th April, 1793, he ought to have done; and that the said *J. S.* did also partially, unlawfully, and of his own authority, refuse to admit certain persons, who claimed at the said full court to be admitted freemen of the said borough, to their freedom therein; and did also refuse to submit to the aldermen, common councilmen, and burgesses of the said borough, in the said full court assembled, the right of such persons

to be admitted to their freedom, and which, by the aforesaid constitution, he ought to have done.

“That the said *J. S.* at and during the election, did act partially in the execution of his office as returning officer, and did, at the poll, partially and unlawfully reject the votes tendered by several persons having a right to vote at the said election, which votes he, the said *J. S.* ought to have received; and also did, at the said poll, partially and unlawfully receive and admit the votes of several persons who had no right to vote at the said election, which votes he, the said *John Simpson*, ought, as returning officer, to have rejected.”

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view to the election, of his own single authority, whereas he ought to have consulted others of the corporation thereupon, and also partially refusing to admit others.



## Sect. 6.

58 Journ. 269.  
353.

Upon the report of such resolutions to the house, on the 18th March, and after Mr. *Simpson* had been heard, on the 25th April, it was resolved, "That the said *John Simpson*, at a full court or general assembly of the said borough, holden on the day previous to the day of election, in direct contradiction to the said determination, acted illegally, and in breach of the privilege of this house."

Resolution  
against such  
officer for par-  
tiality at the  
poll.

"That the said *John Simpson*, on the day of election, also acted illegally and partially in the execution of his office, and in breach of the privileges of this house."

Such officer  
committed to  
custody, and  
reprimanded.

He was then ordered into the custody of the serjeant at arms, from whence he was discharged on the 18th May, after receiving a reprimand from the speaker (*a*).

2 Peck. 13 to  
39.

In the *Middlesex* case, 1803, this subject was fully discussed; and upon the evidence, the committee came to the following resolutions, from whence the facts sufficiently appear:

Resolutions  
against re-  
turning officer

"That it appears to this committee, that on the thirteenth, fourteenth, and fifteenth days

(*a*) The language of the reprimand of the speaker is substantially the same with that of the above resolutions. See 58 Journ. 424.



of the poll, on the first of which days there was a considerable majority of votes in favour of *William Mainwaring*, esq. the sheriff, *Robert Albion Cox*, esq. and sir *William Rawlins*, knt. wilfully, knowingly, and corruptly, did admit to poll for sir *Francis Burdett*, bart. upwards of three hundred persons, claiming to vote under a fictitious right, as proprietors of a mill, purported to be situate in the parish of *Isleworth*, and called the *Good-intent-mill*, by which means a colourable majority was obtained in favour of sir *Francis Burdett*, who was thereby returned as having the greatest number of legal votes."

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for knowingly and corruptly admitting fictitious votes for a particular candidate, when another candidate was at the head of the poll;  
59 Journ. 397.]

"That it appears to this committee, that on the fifteenth day, towards the close of the poll, after such majority was established, they rejected persons tendering their votes under the same circumstances."

such officer afterwards rejecting similar votes, when the majority for such candidate was established;

"That it appears to this committee, that the sheriff, at the poll, acted in a judicial capacity, by admitting counsel to argue the validity of votes, and by deciding, in some instances, on the validity of such votes; that in other instances, they refused to decide the validity of votes which were objected to, and stated that they would admit any person to poll who would

for inconsistency, in sometimes acting judicially and sometimes ministerially.



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take the oaths, declaring themselves to be only ministerial officers, thereby acting in a manner contradictory to their practice in other cases, and in flagrant violation of their duty."

"That it appears to this committee, that the obvious tendency of their conduct was to admit persons having no right to poll, and to afford the greatest encouragement to perjury."

60 Journ. 130,  
131.

Officer so of-  
fending com-  
mitted, and re-  
primanded.

Upon the report of these resolutions, after the matter had been debated, and counsel heard (*a*), on the 11th March, the house agreed with the committee in their resolutions, and resolved, "That the said *R. A. Cox*, esq. and sir *W. Rawlins*, knt. by their conduct and practices at the said election, as stated in the foregoing resolutions, as well as by refusing to refer to the assessments for the land-tax, acted in violation of their duty, contrary to law, and in breach of the privilege of the house." And they were committed to *Newgate*, where they remained till the 10th May, when they were

60 Journ. 258,  
259.

(*a*) See the Journals, 21st, 25th, 29th January; 1st, 5th, 8th, 13th, 19th, 27th February; 1st and 8th March, 1805. 60 Journ. 9. 16. 25. 28. 36. 44. 55. 71. 89. 113. 129.



reprimanded (a) by the speaker, and discharged.

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(a) "*Sir William Rawlins,*  
*and Robert Albion Cox,*

"Your conduct having undergone the severe but just animadversions of this house, followed by a sentence of ignominious punishment, it is fit to be understood by you, and by all men, what this house has considered to be the character of your offence, and upon what grounds you are this day to be liberated.

"The sum of your offence is this: that you being the sheriff and returning officer, did, at an election for the county of *Middlesex*, for the purpose of giving a colourable majority to one candidate in prejudice of another, wilfully, knowingly, and corruptly admit fictitious votes upon the poll; that your inconsistent and contradictory practices afforded the greatest encouragement to perjury, and that you refused to examine the validity of votes by reference to the land tax assessments, in defiance of the laws of your country.

"Greater offences than these cannot be laid to the charge of any men holding the high office with which you were then invested; an office to which you were raised by the free choice of your fellow

citizens in the metropolis of this empire, and of which office you betrayed the most important duties; violating at once the freedom of elections, the privileges of this house, and the just constitution of parliaments.

"Upon these charges, established by ample and conclusive evidence, you were committed to his majesty's gaol of Newgate, the common receptacle of malefactors, there to remain prisoners, amongst those over whom you had been magistrates; a signal proof of the power and the justice of this house, an indelible disgrace upon you, and a memorable example to others.

"Nevertheless, it appearing now, by your petition, that your minds have been humbled to a due sense of your misconduct, and that your errors may be in some degree imputed to the ignorant or criminal advice under which you unfortunately acted, this house is willing to believe that the ends of justice are at length satisfied: it has therefore consented that you now be discharged.

"And you are discharged accordingly, paying your fees."



## Sect. 7.

SECTION 7. *Of the responsibility of returning officers for the due execution of their duty.*

RETURNING officers are highly responsible for the due performance of their office, in every branch thereof. They are amenable in all instances to the house of commons, as fulfilling a public duty immediately within their jurisdiction. There are also several statutory penalties imposed upon them for default in various respects. These will be detailed when treating of the particular duties in respect of which such penalties attach (*a*).

A returning officer is responsible in an action, to a party having a right to vote, for improperly refusing his vote;

In addition to their responsibility, in manner above mentioned, they are further answerable at the common law, to the electors, in actions at their suit, in respect of any votes which they may improperly reject, their liability to such action (though long disputed), being now decidedly established.

(*a*) Disobedience of the injunctions of a statute relating to a public duty is of itself an indictable offence. See 4 Hawk. P.C. lib. 2. c. 25. § 4. See also

the stat. 25 Geo. 3. c. 84, which by § 13, makes any returning officers offending against that act answerable under an information or indictment.



This liability, however, is in some degree qualified, inasmuch, as in order to maintain any such action against a returning officer, it must both be alleged by the pleading, and proved by the evidence, that in refusing to admit the vote, he was actuated by fraud and malice.

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but in such action, malice must be alleged and proved against the defendant.

In the memorable case of *Ashby v. White and others*, T. T. 2 Ann. the plaintiff, a voter at *Aylesbury*, brought an action against the defendants, who were the constables, and as such, returning officers, for rejecting his vote, which he had tendered at the election. After a verdict for the plaintiff, it was moved in arrest of judgment that the action was not maintainable.

2 Ld. Raym. 938.  
Salk. 19.  
3 Salk. 17.

Three judges, viz. *Gould, Powys, and Powell*, were of that opinion (a), and contrary to the opinion of lord chief justice *Holt* (b), the judgment was arrested.

(a) Their opinion was founded principally upon these grounds: *First*, because the defendants were judges of the thing, and acting therein as judges; *secondly*, because it was a parliamentary matter, with which the court had nothing to do; *thirdly*, because the plaintiff's privilege of voting was not a matter of property or profit, so that the hindrance of it was merely

*damnum sine injuriâ*; *fourthly*, that it related to the public, and was a popular offence. It also had great weight with some of the court; that it was an action *primæ impressionis*; and that, if allowed, it would tend to a multiplicity of actions.

(b) Lord Ch. J. *Holt*, in maintaining that the action would lie, gave his reasons in a very learned judgment,



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1 Bro. Parl.  
Cas. fol. ed. 45.  
oct. ed. 64.

The decision was afterwards reversed in the house of lords (a); and this judgment of the house of lords established a rule which has been considered as decisive in subsequent cases, although the umbrage taken by the commons thereat, and their resolutions thereupon pass-

wherein he respectively answered the objections of the other judges, and after historically observing upon the parliamentary representation, shewing the importance, in the contemplation of the law, of the franchise of voting; and remarking, that if the plaintiff had the right, he must of necessity have a means to vindicate and maintain it, and a remedy, if injured, in the exercise or enjoyment of it; that it is a vain thing to imagine a right without a remedy, for that want of right and want of remedy are reciprocal.

*Powell*, J. thought, that after a determination in parliament, in favour of the plaintiff's right, the trouble and charge of vindicating it would maintain an action, but that none lay before. 2 Ld. Raym. 947. 949.

(a) The judgment passed, 50 lords against 16.

The following resolutions were passed 26th January, 1703 :

1. "That according to the known laws and usage of par-

liament, it is the sole right of the commons of *England*, in parliament assembled, (except in cases otherwise provided for by act of parliament), to examine and determine all matters relating to the right of election of their own members."

2. "That according to the known laws and usage of parliament, neither the qualification of any elector, or the right of any person elected, is cognizable or determinable elsewhere than before the commons of *England*, in parliament assembled, except in such cases as are especially provided for by act of parliament."

3. "That the examining and determining the qualification or right of any elector, or any person elected to serve in parliament, in any court of law, or elsewhere, than before the commons of *England* in parliament assembled, (except in such cases as are especially provided for by act of parliament), will expose all mayors, bailiffs, and other officers, who are obliged to take the



ed (a), had the effect, for a considerable time, of deterring persons from acting upon the law thus laid down.

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On the 9th March, 1767, complaint was made to the house, that in breach of the privilege of

31 Journ. 211.  
229. 279. 292.

poll, and make a return there-upon, to multiplicity of actions, vexatious suits, and insupportable expences, and will subject them to different and independent jurisdictions, and inconsistent determinations in the same case, without relief."

4. "That *Matthew Ashby* having, in contempt of the jurisdiction of this house, commenced and prosecuted an action at common law against *William White*, and others, the constables of *Aylesbury*, for not receiving his vote at an election of burgesses to serve in parliament for the said borough of *Aylesbury*, is guilty of a breach of the privilege of this house."

5. "That whosoever shall presume to commence or prosecute any action, indictment, or information, which shall bring the right of the electors, or persons elected to serve in parliament, to the determination of any other jurisdiction than that of the house of commons, (except in cases especially provided for by act of parliament), such person or persons, and all attorneys,

solicitors, counsellors, and serjeants at law, soliciting, prosecuting, or pleading in any such case, are guilty of a high breach of the privilege of this house."

These resolutions were ordered to be fixed on *Westminster-hall* gate. 14 Journ. 308.

Notwithstanding these resolutions, the above action being proceeded in, and also several new ones brought against the constables of *Aylesbury*, for refusing votes, and complaint of this having been made to the house of commons, they ordered the several plaintiffs to attend, and committed them to Newgate; and *Mr. Mead*, an attorney at law, was also ordered into custody of the serjeant at arms, for proceeding in the cause of *Ashby v. White* since the last session of parliament. See 21st, 23d, and 24th November, and 5th December, 1704. 14 Journ. 431. 433. 445. See also *ib.* 549. 552.

(a) In consequence of what had passed in the lower house, a committee of the house of lords drew up a very long and



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Complaint to the house of action brought against returning officer for refusing votes.

the house, *Matthias Davids*, and other persons (who were named) had brought actions of trespass on the case, against Mr. *Merrick*, the late high sheriff of *Pembrokeshire*, for refusing their votes at the late election for a knight of the shire, and that certain persons named acted as attornies in the said actions. After debate,

elaborate state of the case, which being read and approved of, the house, on the 27th March, 1704, came to the four following resolutions: (See 17 Lords Journ. 534.)

1st, "That by the known laws of this kingdom, every freeholder, or other person, having a right to give his vote at the election of members to serve in parliament, and, being wilfully denied or hindered so to do, by the officer who ought to receive the same, may maintain an action in the queen's courts against such officer, to assert his right, and recover damages for the injury."

2dly, "That the asserting that a person, having a right to give his vote at an election, and, being hindered so to do by the officer who ought to take the same, is without remedy for such wrong, by the ordinary course of law, is destructive of the property of the subjects, against the freedom of elections, and manifestly tends to encourage corruption and partiality in officers, who are to make re-

turns to parliament, and to subject the freeholders, and other electors, to their arbitrary will and pleasure."

3dly, "That the declaring *Matthew Ashby* guilty of a breach of privilege of the house of commons, for prosecuting an action against the constables of *Aylesbury*, for not receiving his vote at an election, after he had, in the known and proper methods of law, obtained a judgment in parliament for recovery of his damages, is an unprecedented attempt upon the judicature of parliament, and is, in effect, to subject the law of *England* to the votes of the house of commons."

4thly, "That the deterring electors from prosecuting actions in the ordinary course of law, where they are deprived of their right of voting, and terrifying attornies, solicitors, counsellors, and serjeants at law, from soliciting, prosecuting, and pleading, in such cases, by voting their so doing to be a breach of privilege of the house of commons, is a manifest assuming a power;



and several adjournments, viz. to the 16th and 30th March, and 6th and 9th April, the latter day was appointed for hearing the matter at the bar of the house; the house however having been informed, that the parties would undertake to discontinue the actions in question; and after-

to controul the law, to hinder the course of justice, and subject the property of *Englishmen* to the arbitrary votes of the house of commons."

And on the 27th of February following, the house further resolved: (See 17 Lords Journ. 677.)

1st, "That neither house of parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of parliament."

2dly, "That every freeman of *England*, who apprehends himself to be injured, has a right to seek redress by action at law; and that the commencing and prosecuting an action at common law against any person (not entitled to privilege of parliament) is no breach of the privilege of parliament."

3dly, "That the house of commons, in committing to Newgate *Daniel Horne*, *Henry Bass*, and *John Paton*, junior, *John Paty*, and *John Oviatt*, for commencing and prosecuting an action at common law, against the late con-

stables of *Aylesbury*, for not allowing their votes in election of members to serve in parliament, upon pretence that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privilege of that house, have assumed to themselves alone a legislative authority, by pretending to attribute the force of a law to their declaration; have claimed a jurisdiction not warranted by the constitution; and have assumed a new privilege, to which they can shew no title by the law and custom of parliament; and have thereby, as far as in them lies, subjected the rights of *Englishmen*, and the freedom of their persons, to the arbitrary votes of the house of commons."

4thly, "That every *Englishman* who is imprisoned, by any authority whatsoever, has an undoubted right, by his agents or friends, to apply for and obtain a writ of *habeas corpus*, in order to procure his liberty by due course of law."

5thly, "That for the house



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wards being further informed, that they had so done, the matter was thereupon dropped; since which, although such actions have been brought more than once, the house has not interfered.

3 Lud. 248, (n.) *Sargent v. Milward*, was an action brought after the general election, in 1784, against the defendant, who was mayor of *Hastings*. The declaration stating the plaintiff's right, and that the defendant, knowing the same, and wrongfully intending to deprive him thereof, refused his vote. The defendant pleaded the general issue. The plaintiff had a verdict for £200

Heyw. Bor. El.  
328.

of commons to censure or punish any person for assisting a prisoner to procure a writ of *habeas corpus*, or by vote or otherwise to deter men from soliciting, prosecuting, or pleading upon such writ of *habeas corpus*, in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example, by denying the necessary assistance to the prisoner, upon a commitment of the house of commons, which has ever been allowed upon all commitments by any authority whatsoever."

6thly, "That a writ of error is not a writ of grace, but of right, and ought not to be denied to the subject, when duly applied for, though at the request of either house of parliament; the denial thereof being an obstruction of justice, contrary to *magna charta*."

These latter resolutions occasioned a free conference between the two houses; but neither of them being inclined to yield to the other, the queen soon afterwards put an end to the dispute by dissolving the parliament.



damages. The defendant's malice made part of the plaintiff's case. The action was brought in the court of common pleas, and afterwards, upon writ of error, the proceedings were removed into the court of king's bench. When the case came on for argument, in *Easter* term, 1786, the court prevented the counsel for the plaintiff in error from discussing their objections to the action, by telling them, that the case of *Ashby v. White*, in the house of lords, was in point, and so conclusive upon the subject, that it would be in vain to agitate the question.

*Drewe v. Coulton*, was an action of the same 2 Lud. 245, (n.) sort, which came on to be tried before *Wilson*, J. at the Lent assizes for *Cornwall*, 1787. The plaintiff's counsel having, in opening the case, declared that he did not mean to charge the defendant with any thing *malicious* in his refusal of the vote; the defendant's counsel objected to the competency of the plaintiff to proceed with his evidence, upon the ground of the admission on his part that the defendant had done nothing *wilfully* wrong, alleging, as the plaintiff's counsel admitted, that he had acted conformably to the usage of the last thirty years, and to three concurring decisions of election



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committees; and contending, that the foundation of the action, and of all others against officers of the law in the execution of their duty, was a *wilful* and *malicious* misfeasance.

The learned judge at first inclined to let the plaintiff proceed with his evidence, saying, there were two questions for the jury to consider; *first*, whether the plaintiff had a right to vote; and, *secondly*, whether the defendant had acted maliciously, in refusing the vote; and that it might be necessary to go through the whole case, in order to ascertain these points.

But, after a full hearing of the counsel on both sides, his lordship was of opinion, that he ought to direct a verdict to be taken for the defendant, or the plaintiff to be non-suited, without proceeding further. He observed, that the statute 7 & 8 Will. 3. c. 7, which was made to prevent false returns, and gives an action to the party grieved, does not allow it to the candidate himself, unless the return be *wilfully* false; and that it would be very inconsistent to suppose that one much less aggrieved, and who has less interest in the same transaction should yet be more favoured in the recovery of damages.



He then mentioned the case of *Burgoyne v. Moss*, as a case of an action by a candidate against a returning officer, for a false return, wherein the defendant had a verdict upon the ground that he had not acted *maliciously*. Sect. 7.  
2 Lnd. 246, (n)

Mr. justice *Wilson* also observed, that lord chief justice *Holt*, in the report of the case of *Ashby v. White*, in the king's bench, endeavours to establish, that an action lies *generally* for the mere obstruction of the right; but that the decision of the house of lords, upon that case, was founded on a different principle, viz. the wilfulness of the act; and that the same principle was enforced, in the justification which the house of lords published of their conduct; which it was supposed was drawn up by the chief justice himself.

He said, that *Holt* stood single in this particular opinion; but in compliance to the authority of so great a name, he offered to direct the question to be put upon the record in a special verdict, in order to have it solemnly argued and determined, if the leading counsel for the plaintiff would declare his own assent to the opinion of lord *Holt*.



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This was declined, and the plaintiff was non-suited.

No step was afterwards taken to renew the question, by moving to set aside the non-suit.

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SECTION 8. *Scotland.*

THE subject matter of this chapter, applying with respect to elections in *England*, under the term *returning officer*, to the person who presides, and with whom it is to make the return to the instrument under which the election is immediately holden, it is requisite to explain, that in *Scotland* the corresponding functions are not wholly committed to any one person, but that in different particulars, the duty devolves upon different persons.

That which regards the immediate holding the election, and making the immediate return, belongs partly to the preses, and partly to the clerk of the meeting, in county elections; and to the common clerk of the presiding borough, in borough elections, (the same rule obtaining



throughout in the latter cases, and not varying according to the constitution of each place, as in *England*). In what respects the above duty belongs respectively to the preses or to the clerk, will appear in stating the progress of the election proceedings.

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As to who are the persons to act as preses and clerk at the respective elections :

The former is either directly or indirectly chosen for the occasion, in all instances. This is also the case with respect to the clerk, at elections for counties, but not at those for boroughs.

At elections for counties, the preses and clerk of the meeting for the time are elected by the freeholders ; the manner of their election being as follows :

At county elections, preses and clerk to be chosen by freeholders.

The *Scots* act of 1681, c. 21, directs that the first or second commissioner(*a*) for the shire, last elected, or in his absence the sheriff-clerk, or stewart-clerk, is to ask the voters who shall preside? and who shall be clerk to the meeting?

App. civ. cv.  
Manner of  
their election

(*a*) Since the union, there being but one commissioner from each shire, there is no alternative as to such commissioners.



## Sect. 6.

Commissioner for shire last elected, or sheriff-clerk, or steward-clerk, presides in the choice of preses and clerk.

*App. cxlix.*

Freeholders may be required to take oaths appointed for electors of members of parliament.

*App. cxc. cxliv.*  
(where see the oath.)

*App. clviii.*

Roll of freeholders to be called over as last made up.

By virtue of this provision, such sheriff-clerk, or steward-clerk, takes the chair; whereupon the freeholders proceed to vote. But before voting, they are, by the statute 7 Geo. 2. c. 16, § 10, if required by any freeholder present, to take the oaths appointed to be taken by electors of members of parliament (*a*); and also, by the statute 37 Geo. 3. c. 138. § 2 (*b*), if required by any person present, the oath of trust and possession in the stat. 7 Geo. 2. c. 16. § 2.

The person who has thus taken the chair calls the roll of electors (which by the stat. 16 Geo. 2. c. 11. § 12, is to be the roll last made up by the freeholders, whether at the *Michaelmas* meeting, or at the last election of a member (*c*);) and

(*a*) See also stat. 1 Geo. 1. c. 13. *App. cxl.*

For the oaths which may be required of electors, see *post*, chap. 11.

(*b*) It had been questioned whether this oath could be put before the choice of a preses or clerk, 1 *Wight*, 256; but the above statute has put that matter out of doubt.

(*c*) Mr. *Wight*, 307, *et seq.* makes a question, whether in calling the roll, and receiving the votes for preses and clerk, where two persons stand upon the roll, one of whom only is entitled to vote, (as between

the life-renter and fiar, by the *Scots* act, 1681, (*App. ciii. civ.*) the latter of whom can only vote in the absence of the former), both ought to be called and permitted to vote; and also, whether a person disqualified under the bribery act ought to be called and to be permitted to vote. It is to be observed, however, that the objections to such votes depends upon statutes, the language of which does not in terms extend to voting in the choice of preses and clerk, and it is very questionable whether the construction of these acts would be consider-



proceeds to receive the votes for a preses and clerk, according to such roll (which, by the same clause, can only be altered at this meeting after such preses and clerk are chosen).

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The legislature has made the freeholders' roll the criterion, in voting for preses and clerk, and has imposed a penalty, by the stat. 16 Geo. 2. c. 11. § 13, upon the commissioner, or sheriff-clerk or steward-clerk, if he receive the vote of any person not standing upon the roll, or if he do not call for, or refuse the vote of any person whose name is thereupon. The penalty is that of £300 to every candidate for the offices of preses and clerk respectively, for whom such person shall not have voted, to be recovered as directed by the act. He is not, however, so strictly bound by the roll, but that if he is satisfied that a name remaining there cannot apply to any one (*a*), as where the name of a deceased per-

*App. clix.*  
Penalty for admitting vote of person not on freeholders' roll;  
or for refusing that of a person who is.

Where it is evident that a name on the roll, though answering the description of a person claim-

ed as affecting such votes, although the votes of the same persons would not be good in the choice of members of parliament. The stat. 37 Geo. 3. c. 138, affords an inference to this effect, (*App. clxxxviii.*) that statute incapacitating persons disabled from voting for members of parliament by the stat. 22 Geo. 3. c. 41,

from voting in the choice of preses and clerk.

(*a*) At the *Mid-Lothian* election, 1744, this case occurred. The name of sir *James Stewart*, of *Goodtrees*, stood upon the roll of 1742, which was the last made up; there were no minutes to shew when the persons standing upon the roll had been ad-



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ing to vote does not apply to his vote, he may be rejected.

Persons whose names are on the roll, to be called, and admitted to vote for preses and

son is still upon the roll, he may and ought to omit to call it.

But except in such case as that just mentioned, in calling the freeholders and admitting their votes, he is to adhere to the roll (*a*); nor can he, it seems, take notice of any alteration

mitted, or the titles upon which they were enrolled. The then sir *James Stewart*, of *Goodtrees*, appeared at the meeting, and claimed to have his name called, and to vote for preses and clerk, but his application was rejected, upon the ground that the entry on the roll was not descriptive of him, but of his father. He complained in consequence to the court of session, and demanded the penalty; but his complaint was dismissed. 1 *Wight*, 310.

(*a*) At the election for the shire of *Cromarty*, 1768, Mr. *Fraser* stood upon the freeholders roll of the county, made up at *Michaelmas*, 1767, in virtue of several parcels of land, rated at £426. 4s. 2d. Scots, of valued rent. Before the election, the value of one of the parcels of land (by a decree that the same was not entitled to any part of the *cumulo* valuation divided by the commissioners of supply) was reduced to what Mr. *Fraser* had admitted would

not be a good qualification, but up to the day of election no order had been obtained for striking him off the roll; but though it was one of the conclusions of the suit that he was not entitled to continue upon the roll of freeholders, the court of session found that conclusion incompetent. The commissioner last elected tendered to Mr. *Fraser* the trust oath, in the 7 Geo. 2. after filling up, in the blank left in the beginning of that oath, the description of his lands, copied *verbatim* from his claim for enrolment, which not only mentioned the names of the several parcels of which the lands were composed, but that they stood valued at upwards of £400. Mr. *Fraser* refusing to take the oath in these terms, the commissioner did not call his name. Mr. *Fraser* prosecuted him for £600, on account of his not calling him in the election of preses and clerk, and recovered one of the penalties. 1 *Wight*, 311.



in the value of the qualification, where that qualification has been permitted to remain on the roll, notwithstanding such alteration.

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clerk, notwithstanding alteration in value, which would go to invalidate such qualification.

It should be adverted to, that, by the stat. 37 Geo. 3. c. 138. § 1, no person described in the act of the 22 Geo. 3. c. 41 (*a*), and thereby rendered incapable of voting in the election of members to serve in parliament, is capable of voting for the choice of a preses or clerk; the vote of every such person being by that act enacted to be void, and the person so voting made liable to a penalty of £100, (to be recovered within twelve months, and applied according to the act), and incapacitated from bearing any office of trust under the crown.

*App. clxxxviii.*  
No person incapacitated by 22 Geo. 3. c. 41. from voting at elections of members to vote in choice of preses or clerk.

With a view to prevent uncertainty in the choice of persons for these offices, the stat. 16 Geo. 2. c. 11. § 13, has provided for the case of an equality of votes, in the choice of preses and clerk, in which event, the commissioner last elected, and, in his absence, any freeholder present, who last represented the shire or stewartry in any former parliament; and if no such person is present, then the freeholder present who presided last at any meeting at any election;

*App. clx.*  
Who is to have the casting voice in case of equality in such choice.

(*a*) See this statute among the statutes relating to disqualifications of electors.



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and in his absence, the freeholder present who presided last at any *Michaelmas* meeting; and if none such are present, the freeholder present who stands first on the roll, has, in addition to his own, the casting vote (*a*).

## App. clxi.

Persons chosen by majority present, to be preses and clerk respectively.

Under these provisions, by § 14 of the same statute the persons chosen by the majority present, are to be respectively preses and clerk of the meeting for such election.

## App. cxli.

No freeholders to separate from such majority, and set up any other person as clerk or preses.

In order to prevent irregularity in these proceedings, the same clause forbids any number of freeholders to separate from the majority of those present who stand upon the roll, and to set up any other person as preses or clerk than those so chosen; and every freeholder acting contrary thereto is to forfeit £5 to the candidate chosen by the majority, from whom such separation was made, to be recovered in manner therein directed.

## Penalty for so doing.

This choice being made, the commissioner, or sheriff-clerk or steward-clerk, in conformity

(*a*) It may be prudent for the person who has a casting voice to declare it, whether there be an equality or not, inasmuch as it may eventually become material, as where, for the purpose of deciding upon the title of the preses or clerk, a committee are called upon to investigate the legality of their election.



to the stat. 16 Geo. 2. c. 11. § 15, signs the minutes of the election of the preses and clerk, and delivers the same to the latter, which he is required to do under a penalty of £100, to be forfeited to the preses for neglect or refusal, or for signing false minutes, to be recovered by him according to the act.

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*App. clxii.*  
Minutes of election of preses and clerk to be signed and delivered to the latter.

Penalty on neglect, &c.

At the election for the city of *Edinburgh*, the lord provost acts as preses, and the common clerk makes the return in conformity to the stat. 6 Ann. c. 6. § 5.

*App. cxxi.*

At elections for districts of boroughs, by virtue of the act of union, the delegate from the presiding borough for the time is preses; and by the same act, and that of the 6 Ann. c. 6. § 5, the common clerk of the same (*a*) borough makes the return (*b*).

*App. cxv.*  
At elections for districts of boroughs, delegate from presiding borough, preses.  
*App. cxviii.*  
*cxxii.*

(*a*) In the case of *Wick*, &c. 1807, *ante*, 430, one of the objections made to the return of the sitting member was, that the common clerk of *Dornock*, who had signed the commission of the delegate from that borough, was also a bailie of the borough, and as such was a member of the town council, and voted at the election; and that these offices were incompatible with each

other, and consequently that the commission was not valid, as being made out by an officer who could not legally act. But the committee, in holding the sitting member duly elected, in effect overruled the objection.

(*b*) For the regulations with respect to the order in which the boroughs of different districts preside, see chap. 7. sect. 2. *post*, 525, *et seq.*



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(See *ante*,  
sect. 3.)

With respect to persons not being returning officers presuming to act:

*App. clxi.*

No person not  
chosen by ma-  
jority of free-  
holders on the  
roll to act as  
preses or clerk.

At county elections, the stat. 16 Geo. 2. c. 11. § 14, forbids any person not chosen by the majority of the freeholders on the roll, to act as preses or clerk, and any person not so chosen presuming to act as either, incurs thereby a penalty of £200, to be forfeited to the candidate for such office respectively chosen by the majority.

(See *ante*, 446.)

It is not necessary to repeat, that persons presuming to act in any of the situations connected with the execution of the writ or precept, without being entitled so to do, are amenable to the jurisdiction of the house of commons.

20 Journ. 31.

92. 138, 139.

A person not  
the clerk of the  
presiding bo-  
rough, acting  
as returning  
officer, com-  
mitted to cus-  
tody.

*Inverness*, &c. 19th October and 18th January, 1722, the house resolved, “ that *Hugh Baillie*, clerk, in *Inverness*, having presumed to act as returning officer at the election of a burgess to serve in this present parliament for the district of boroughs of *Inverness*, *Nairn*, *Forres*, and *Fortrose*, has acted in defiance of the laws of this realm, and is guilty of a high crime and misdemeanor, and of a breach of privilege of this house:” and he was ordered into the custody of the serjeant at arms.



A similar resolution and order were made against *George Ireland*, common clerk of the borough of *Kinghorn*, for acting as returning officer at the election of a member for the district of boroughs of *Dysart*, *Burntisland*, *Kirkaldie*, and *Kinghorn*, when the borough of *Dysart* was the presiding borough of the said district of boroughs.

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20 Journ. 92.  
113, 114.

With respect to the oaths to be taken by returning officers : (See *ante*,  
sect. 6.)

The preses is not as such required to take any oath, otherwise than what he may be called upon to take as an elector.

The clerk of the meeting, or common clerk at all elections, takes the oaths of allegiance and abjuration, and subscribes the assurance.

Oaths to be  
taken by clerk  
of the meeting  
at county elec-  
tions, and com-  
mon clerk at  
other elections.

At county elections, the clerk of the meeting also takes and subscribes the oath in the stat. 16 Geo. 2. c. 11. § 37, which the preses administers to him.

App. clxxvii.

At elections for the city of *Edinburgh*, the oath in the stat. 2 Geo. 2. c. 24. § 3, having been repealed by the stat. 16 Geo. 2. c. 11. § 38, as to all returning officers in *Scotland*, and none

Elections for  
city of *Edin-*  
*burgh*.

App. clxxviii.



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other substituted which would apply to him, it does not appear that the law requires any oath to be taken by the common clerk at the election (a).

App. clxxvi.  
Oath of com-  
mon clerk at  
elections for  
districts of bo-  
roughs.

At elections for districts of boroughs, the common clerk, by the stat. 16 Geo. 2. c. 11. § 35, takes the oath therein, which is to be administered to him by the preses, or, in his absence, by any other delegate.

With respect to the general duty of returning officers, how far ministerial or judicial :

Preses, clerk  
of meeting,  
and common  
clerk, only mi-  
nisterial.

As well from the language of the statutes in the directions thereby to the preses, clerk of the meeting, and common clerk respectively, and from the nature of the acts required to be done by them, as from the tenor of the oaths taken by either of the latter, under the 16 Geo. 2. each of these offices seem to be wholly ministerial.

The question as to qualifications of electors at elections in *Scotland*, from the previous discussion in making up the freeholders roll, with a view to county elections, and the previous sub-election of delegates in order to borough elections, are

(a) Mr. *Wight*, 380, speaks for him to take the oath in of its having been the practice the stat. 2 Geo. 2. c. 24.



in general reduced within much narrower compass, than at elections in *England*. Such, however, as arise, are decided according to the nature of the question, by one or other of these officers: those as to whether freeholders are upon the roll, are decided by the preses at elections for commissioners of shires, but all others are decided by the meeting. At elections for districts of boroughs, questions as to whether commissions of delegates are sufficiently authenticated, are decided by the common clerk, and others by the preses.

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As to the responsibility of returning officers for the due execution of their duty: (See ante, sect 7.)

For the responsibility of each of the persons alluded to, as being concerned in holding the election, or making the return, we have only to refer to what has been already stated, when treating of the corresponding duties in *England*.

Moreover, the preses at county elections is, by the stat. 16 Geo. 2. c. 11. § 13, liable to a penalty of £200, if he shall receive the vote of any person who does not stand upon the roll, to be forfeited to every candidate for whom such

*App. clx.*  
Penalty on  
preses receiv-  
ing vote of per-  
son not upon  
the roll,



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or not calling  
for, or refusing  
that of person  
on the roll,

person shall not have voted, to be recovered as directed by the act; and if, in such election, he shall not call for, or shall refuse the vote of any person whose name is upon such roll, he is liable to the same penalty, to be recovered by such person whose name shall not be called for, or whose vote shall be refused, to be recovered in like manner,

The pecuniary penalties which are imposed upon the clerk of the meeting at county elections, or the common clerk at other elections, will be mentioned as connected with the duty by the neglect of which they are incurred.

SECTION 9. *Ireland.*

THAT which has been stated with respect to elections in *England*, will generally apply also to those in *Ireland*. The returning officers for counties are the respective sheriffs (*a*), and

(*a*) In the county of *Londonderry*, the office of sheriff is executed by two persons, as in the case of *Middlesex*, see *post*, 562. n.



those for cities and towns which are counties of themselves, and for other places, are the sheriffs, mayors, sovereigns, port-reeves, provosts, burgo-masters, bailiffs, seneschals, or the like ; the detail of whose duty will be mentioned as we go on.

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The oath required of returning officers depends upon the *Irish* stat. 35 Geo. 3. c. 29. § 9, whereby it is to be taken and subscribed by every returning officer before he proceeds to take the poll, the same being to be administered by a justice of the peace.

*App. ccxliii.*  
(where see the  
oath).  
Oath of return-  
ing officers.

The stat. 57 Geo. 3. c. 131. § 27 (a), recites, that it is necessary to guard against improper conduct of returning officers, and enacts that every returning officer by due course of law convicted of having acted corruptly or partially in the execution of his duty at any election, shall be adjudged guilty of a high misdemeanor, and be imprisoned for three years ; and also shall be for ever incapacitated from holding any office or situation, civil or military, under the crown,

*App. cccxxxlii.*  
Penalty on re-  
turning of-  
ficers acting  
corruptly or  
partially.

The same statute has provided for the case of the death or severe illness of the returning officer or officers ; in which cases, by § 31, the first sworn deputy, who is to be sworn by him-

*App. cccxxxliii.*  
In the case of  
death or severe  
illness of a re-  
turning officer  
first sworn, de-  
puty to act.

(a) By the same statute, § 29, any returning officer, &c. refusing or neglecting to perform his duty according to the act, is made liable to a penalty. See *post*, 515.

*App. cccxxxliii.*

The *Irish* stat. 35 Geo. 3. c. 29. § 21, forbids the employment of counsel to plead before the returning officer ; but, by § 22, counsel may be employed to assist him.

*App. ccl.*



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self for this purpose before the commencement of the poll, is required (under penalty of £1000 to any person suing), to proceed in the poll, and to act for all the purposes of the election, as if he had been originally returning officer, and to take the like oath, (which any two justices are to administer).

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## CHAPTER VI.

### OF THE NOTICE OF ELECTION.

SECTION 1. *Of notice for the different elections; and of the law hereupon, with respect to particular places.*

SECTION 2. *Scotland.*

SECTION 3. *Ireland.*

#### 1. OF notice for the different elections :

Before the interposition of the statute law, various questions arose as to the necessity and sufficiency of the notice of election.

With respect to elections for knights of shires, it appears, that formerly no previous notice was required, the election being in the county court, where the attendance of the suitors was exacted, without reference to the particular business which might come before them. Afterwards,



indeed, it became usual (*a*) (though not in law necessary) to notify to the freeholders by their summons, that it was intended to proceed to an election.

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Dalton, Sheriff, 331.

With respect to other elections, a previous notice was requisite, and if proceeded in, without such notice (at least if any electors were absent), the election was illegal (*b*).

Since the revolution, the statute law has made notice (*c*) necessary in each instance; and from the cases which will be mentioned in the course of this chapter, it will be seen, that if the law be not observed in this particular, the election will not be valid.

With respect to elections for knights of shires:

County elections,

(*a*) The language of the statute 7 Hen. 4. c. 15, regulating elections of knights of the shires, contemplates such notice in the summons, but does not seem to regard it as necessary.—See *post*, 529.

(*b*) *Winchelsea*, Glanv. 19. *Bletchingley*, Glanv. 38. *Stafford*, 22d March, 1623, 1 Journ. 745, Glanv. 25. *Dorset*, 24th March, 1623, 1 Journ. 748, Glanv. 68. *Bridport*, 12th April, 1628, 1 Journ. 882. *Great Marlow*, 19th Nov. 1640, 2 Journ. 31. *Ilchester*, 15th Feb. 1640, 2

Journ. 85. *Helleston*, 27th June, 1660, 8 Journ. 76. *Chippenham*, 20th June, 1661, 8 Journ. 276. In each of those cases, the want of due notice was the principal, and in most of them the only ground of avoiding the election.

(*c*) That no demand can be maintained by a returning officer against a candidate, for proclaiming the election, see *per* lord *Ellenborough*, C. J. in the case of *Morris v. sir Francis Burdett*, *post*, 550.



## Sect. 1.

By the statute 7 and 8 Wil. 3. c. 25. § 3 (*a*), which in certain cases authorized an adjournment of the county court for holding an election, there was to be ten days notice of the time and place.

The statute 25 Geo. 3. c. 84. § 4 (*b*), in making further regulations for such elections, in effect requires a notice, which can in no case be shorter, though it may be somewhat longer, than that which was before directed. That statute commands the sheriff, within two days after the receipt of the writ, to cause proclamation (*c*) to be made at the place where the ensuing election ought by law to be, of a special county court, to be there holden for the purpose of such election only, not later from the day of making such proclamation than the sixteenth, nor sooner than the tenth day.

Sheriff, within two days after receipt of writ, to cause proclamation,

at place of election, of a special county court there for election only, not later than sixteen, nor sooner than ten days from proclamation.

Elections for places being counties.

With respect to elections for places being counties of themselves:

(*a*) For this statute, see *post*, 518.

(*b*) For this statute, see *post*, 533. As to prosecutions of sheriffs, &c. for offences against the act, see § 13 of the act, *post*, chap. 11.

(*c*) Particular hours of the day are appointed for giving notice of election, by the stat. 33 Geo. 3. c. 64, which, though

the recital evidently points at other elections, seems, in its enactment, to reach the case of counties, see *post*, 504.

There is no particular form for the proclamation; any form, therefore, distinctly stating the above purpose of the special county court, will be sufficient.



The sheriff of every such place is, by the statute 19 Geo. 2. c. 28. § 7 (a), forthwith, upon the receipt of the writ, to cause public notice to be given of the time and place of election; and such notice is to be three days, exclusive both of that of receiving the writ, and of that of the election.

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The sheriff forthwith, upon receipt of writ, to cause notice to be given of time and place of election; notice to be three days, exclusive of day of notice and day of election.

With respect to elections for other places :

Elections for other places.

The officer having the execution of the precept, is required, by the statute 7 and 8 Wil. 3. c. 25. § 1 (b), upon receiving the same, and indorsing it, as before mentioned, forthwith to cause public notice (c) to be given of the time and place of election; and such notice is to be

Returning officer, on receipt of precept, forthwith to give notice of time and place of election;

notice to be

(a) For the stat. 19 Geo. 2. c. 28. § 7, (and § 8 as to prosecution of sheriffs offending), see *post*, 537.

(b) For the 7 & 8 W. 3. c. 25. § 1, see *ante*, 348.

*Bridport*, 7th June, 1784. A petition was presented, wherein there was a complaint, that the notice of election was given on a *Sunday*, but the petition was not prosecuted. 40 Journ. 93, 3 Lud. 30, (n.) See Mr. Luder's observations *loc. cit.* where he considers it probable that such a notice would be sufficient. He observes, that

before the statute 29 Car. 2. c. 7, § 6, it was lawful to make arrests, and serve judicial process on a *Sunday*; and that in the case of *Clerkenwell*, 1 Bott. 21, the appointment of overseers of the poor on a *Sunday* was holden legal.

(c) For a form of notice of election, see *App.* xii.

*Corfe Castle*, 6th January, 1701. See a petition upon the same grounds, referred to a committee, 13 Journ. 654. But what was done, does not appear.



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four days at least.

given four days at least before the day of election.

One of the four days is reckoned inclusive, and one exclusive.

17 Journ. 136, 137.

Notice on Friday, and the election on Tuesday, sufficient.

In the computation of such four days, one is reckoned inclusive, and one exclusive. Therefore, in the case of *Chichester*, 13th March, 1711, where the notice was given on the *Friday*, and the election took place on the *Tuesday*, it was holden sufficient.

3 Lud. 3.

Notice on the 27th of the month, and election on the 30th, insufficient.

And, on the other hand, in that of *Seaford*, 1785, where the notice was given on the 27th March, and the election was on the 30th, the notice was considered to be too short, and the election was holden void. Nor would the committee receive evidence which was offered by the sitting members, to shew that all the electors, except two, who were in their interest, were present at the election.

Where notice insufficient, evidence to shew all the electors present at the election, except two, who were in the interest of the party offering it, rejected.

Glanv. 38, 39.

The common law did not assign any particular form or manner of giving notice, further than that particular customs in particular places should be observed, and had left it in the discretion of the returning officer how it should be done; but the stat. 33 Geo. 3. c. 64 (a), which,

(a) The stat. 33 Geo. 3. c. 64. "An act to explain and amend an act, passed in the" "seventh and eighth years of" "king William the third, in-" "tituled, An act for the fur-



contemplating the possibility of inconveniencies from the undue practices of such officers, after reciting the provision of the stat. 7 and 8 Wil. 3.

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c. 25. § 1, before mentioned, enacts, that all (Ante, 503.)

notices to be given of the time and place of election, shall be publicly given, at the usual place or places, within the hours of eight in the forenoon and four in the afternoon, from the 25th day of October to the 25th day of March, inclusive, and within the hours of eight in the forenoon and six in the afternoon, from the 25th day of March to the 25th day of October,

Notice to be publicly given, at the usual places, within certain hours.

*“ther regulating elections of  
“members to serve in parlia-  
“ment, and for the preventing  
“irregular proceedings of she-  
“riffs and other officers in the  
“electing and returning such  
“members, so far as relates  
“to the publication of notices  
“of the time and place of elec-  
“tion.”*

“Whereas by an act, made  
“and passed in the seventh  
“and eighth years of the  
“late king *William* the third,  
“intituled, *An act for the  
“further regulating elections  
“of members to serve in par-  
“liament, and for the prevent-  
“ing irregular proceedings of  
“sheriffs and other officers in  
“the electing and returning  
“such members*, it is enacted,  
“that the proper officers  
“therein mentioned shall,

“upon the receipt of precepts  
“for the election of members  
“to serve in parliament,  
“forthwith cause public no-  
“tice to be given of the time  
“and place of election, and  
“shall proceed to election  
“thereupon within the time  
“by the said act limited, and  
“give four days notice at  
“least of the day appointed  
“for the election; but it is  
“not in the said act specified  
“at what time, or within what  
“hours of the day, it shall be  
“incumbent on the proper of-  
“ficer to give such public no-  
“tice as aforesaid, and where-  
“as, by reason of such uncer-  
“tainty, great inconveniencies  
“may arise from the undue  
“practices of returning offi-  
“cers and others:” “May it  
“please your majesty, that it



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No notice, unless so given, to be valid.

inclusive; and no notice is to be deemed or taken to be good or valid, unless made and published accordingly.

If the requisitions of this statute be not observed with respect to the notice, the election will be regarded as if holden without notice, and will consequently be void, according to the doctrine in cases where notice was required by the common law, and none was given (*a*).

“ may be enacted, and be it  
 “ enacted, by the king’s most  
 “ excellent majesty, by and  
 “ with the advice and consent  
 “ of the lords spiritual and  
 “ temporal, and commons, in  
 “ this present parliament assembled, and by the authority of the same, That,  
 “ from and after the passing  
 “ of this act, all notices to be  
 “ given of the time and place  
 “ of any election of members  
 “ to serve in parliament, shall  
 “ be publicly given at the  
 “ usual place or places, within  
 “ in the hours of eight of the  
 “ clock in the forenoon and  
 “ four of the clock in the afternoon, from the twenty  
 “ fifth day of October to the  
 “ twenty-fifth day of March  
 “ inclusive, and within the  
 “ hours of eight of the clock  
 “ in the forenoon and six of  
 “ the clock in the afternoon,  
 “ from the twenty-fifth day of  
 “ March to the twenty-fifth  
 “ day of October inclusive,  
 “ and not otherwise; and that

“ no notice to be given of the  
 “ time and place of elections  
 “ of members to serve in parliament shall be deemed or  
 “ taken to be a good or valid  
 “ notice for any purposes, or  
 “ to any effect whatsoever,  
 “ which shall not be made  
 “ and published in the manner, and within the time  
 “ of day aforesaid; any law,  
 “ statute, usage, or custom to  
 “ the contrary notwithstanding.”

(*a*) See the cases mentioned, *ante*, 501, and the case of *Edinburgh*, *post*, 512.

*Tewkesbury*, 23d, 27th, and 28th November, and 13th December, 1797. The returning officers presented a petition, stating that they were not aware of the above act, and that they had given the notice of election on the 18th of November, between five and six o’clock in the afternoon, (which was out of the statutable hours), wherefore they were advised that they



2. Of the notice with respect to particular places:

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Cities, boroughs, and towns, in *Wales*, and *Monmouthshire*:

Elections for boroughs in Wales and Monmouthshire.

In addition to the provisions of the statutes just mentioned, that of the 35 Hen. 8. c. 11. *App. li.* must also be attended to.

That statute, in regulating the payment of the wages of the knights and burgesses for places in *Wales*, by § 3, adverting to the contribution by the inhabitants of the above cities and boroughs, not finding burgesses for parliament themselves, to the wages of the burgesses of the shire towns, provided, with regard to the notice of election, that the burgesses of all cities, boroughs, and towns, contributory to the payment of the burgesses wages of such shire towns, should be admonished by proclamation, or otherwise, by the mayors, bailiffs, or other head officers of the said towns, or by one of them, to come, at such time and place, lawful and reasonable, as should be by them, or one of

Burgesses of cities, &c. contributory to shire towns, to have notice of election.

could not legally proceed to election, and praying that a new writ might be issued. The house having referred to the stat. 7 & 8 W. 3. c. 25,

and to the above act, and also to that of the 7 & 8 W. 3. c. 84, a new writ was ordered. 53 Journ. 116. 123. 128. 149.



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them, assigned, to give their elections for the electing of such burgesses.

Although the contribution by reason whereof the burgesses so to be admonished, were to receive such notice, and afterwards to vote at the election, has by practice ceased to operate, the rule which was grafted thereupon still prevails, and it is necessary that it should be observed.

8 Journ. 417.  
Election void,  
because such

In the case of *Cardigan*, 30th April, 1662 (a), the election of Mr. *Phillips* was holden void,

(a) Serjeant *Charlton* reported from the committee of privileges and elections, touching the election for the town of *Cardigan* in *Wales*, between Mr. *Phillips* and sir *Francis Lloyd*, "that the question did arise upon the statute of the thirty-fifth of *Henry the eighth*, as to the notice to be given of the election for members to serve for shire towns in *Wales*: and the committee was of opinion, that notice of all elections of members for shire towns ought, by the intent of the said act, to be given to the out corporations and boroughs which do not send burgesses themselves; and that no such notice being given, therefore the election of the said Mr. *Phillips* was void."

Resolved, "That the house doth agree with the committee, that the election of Mr. *Phillips*, to serve for the shire town of *Cardigan*, is void; because due notice was not given of the said election."

Resolved, "That this house doth agree with the committee, that notice of all elections of members, to serve for shire towns in *Wales*, ought to be given to the out corporations and boroughs in such shire." 8 Journ. 417.

In the case of *Montgomery*, 17th January, 1705, there was a complaint of the insufficiency of notice; but it appearing by the evidence that six days notice had been given of the election, and that it had been given at each place re-



because notice had not been given to the out corporations and boroughs according to the above act.

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notice not given.

*New Shoreham :*

New Shoreham :

The officer to whom the writ (*a*) or precept shall be directed, is, by the statute 11 Geo. 3. c. 55. § 5, upon the receipt of the same, forthwith to cause public notice of the day of election to be given within the borough of *New Shoreham*, and at the towns of *Bramber* and *Steyning*, by fixing up a notice in writing on the market-houses, or on the doors of the churches of the said towns.

App. lxxii.  
Notice of election to be given at certain places, by fixing the same on doors of market houses or churches.

*Cricklade :*

Cricklade :

A corresponding provision is made by the stat. 22 Geo. 3. c. 31. § 5. The notice is to be given within the borough of *Cricklade*, and at the towns of *Highworth*, *Malmsbury*, *Swindon*, and *Wootton Bassett*.

App. lxxxiii.  
The like provision.

*Aylesbury :*

Aylesbury :

By the stat. 44 Geo. 3. c. 60. § 4, the notice

App. lxxxvii.

quired by law, Mr. *Mason*, the sitting member, was holden duly elected. 15 Journ. 94.

(*a*) The statute is thus worded.



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The like provision.

is to be given at the towns of *Great Missenden*, *Wendover*, and *Haddenham*.

SECTION 2. *Scotland.*

County elections.

WITH respect to elections for commissioners of shires:

App. xcvi.

By the *Scots* act of 1587, c. 114, the freeholders are to be warned by proclamation, to be present at the choosing of commissioners of shires.

App. cvi.

Intimation of day of election to be made at head boroughs, on a market day, between 10 and 12 in the forenoon, and at each parish church on the following Sunday.

App. cxxxviii.

By the *Scots* act of 1681, c. 21, publication of the diet of election is to be made at the head borough of the shire or stewartry, upon a market-day, between ten and twelve in the forenoon; and the like intimation (a) is also to be made at each parish church, on the *Sunday* (b) immediately thereafter; which latter requisition is further enforced by the statute 12 Ann. c. 6. § 4, under a penalty of £50, to be recovered as therein; and the notice was thereby

(a) For the form of a sheriff's intimation of a writ, App. cxc.

For the form of the execution thereof, App. cxciii.

(b) If at any of the parish churches, on the *Sunday* when

the writ is to be published, there happen to be no divine service, the sheriff's officer makes his publication at the church door, and returns a formal execution, stating the fact. 1 Wight, 304, (n).



directed to be given at least three days before the election.

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By the stat. 6 Ann. c. 6. § 5, the notice was to be given upon the receipt of the writ forthwith. And by the stat. 35 Geo. 3. c. 65. § 1, the sheriff or stewart depute, or substitute (such officer, whichever it may be, being, by § 2 and 4, the person to act, and not the principal or high sheriff, where there are both), is, within six free days after receiving the writ, to direct the notices required by law to be given as to the time and place of election, which is not to be sooner than six free days, nor later than fifteen, from the publication at the church doors, (under a penalty of £500, by § 3 and 5, in case of neglect or refusal to perform any of the particulars required by the act).

App. cxx.

App. clxxxiv.  
Sheriff, or  
stewart depute  
or substitute,  
within six days  
after receipt of  
writ, to give  
notice as  
above.

Notice from  
six to fifteen  
days.

With respect to the stewartry of *Orkney* and *Zetland* (a):

Orkney and  
Zetland:

(a) In the case of the stewartry of *Orkney* and *Zetland*, 1791, 1 Fras. 369. The notice had been published in the parish churches of *Orkney*, but none was published in those in *Zetland*. Mr. *Balfour* was chosen under an election founded upon such notice, against which, however, a protest was made at the time; and colonel *Dundas*, the opposite candidate,

claimed the seat by petition. The question turned upon the necessity of the notice, as founded upon the election law of *Scotland*, as applied to this stewartry under its peculiar circumstances. Mr. *Balfour* was holden duly elected; but the law having been since settled by the act above stated, it is unnecessary to detail the case.



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App. clxxxvii.  
Notice, how to  
be published.

The same statute of the 35 Geo. 3. by § 6, reciting that the several parish churches in *Orkney* and *Zetland* are situated upon islands detached and difficult of access, enacts, that the writ for the election of a member for the said stewartry, shall be published at the town of *Kirkwall*, and the twelve parish churches in the island of *Pomona*, or the main land of *Orkney* only.

Edinburgh:

With respect to the elections for the city of *Edinburgh*:

No statutory  
notice.

There is no statutory regulation with respect to the notice; neither the act of union, which authorizes the choice of a member, nor the stat. 6 Ann. c. 6, which directs his election upon the receipt of the precept, having laid down any rule thereupon.

App. cxiv. cxxi.

Some notice of  
election neces-  
sary.

(*Ante*, 501.  
506.)

The law therefore depends upon general principles; and from what has been stated as applying to borough elections before the statutes, as well as from the following case, it may be inferred that some notice is necessary.

The proper of-  
ficer omitting  
to give notice  
to convene  
council for

*Edinburgh*, 7th and 13th November, 1780; 16th and 22d March, 1781. The lord provost, having received the precept, and taking no steps for convening the town council, in order



to the fixing the time of election; upon the expiration of the usual interval for so doing in that borough (namely forty-eight hours), a majority of the council being satisfied that the lord provost had received the precept (which he admitted by a letter to one of the bailies, in which he stated, that he had not resolved as to the day on which the council should be summoned for fixing the election), held a meeting for fixing the election, and at the time fixed thereat, held the election accordingly, under which (these proceedings being strongly protested against by the lord provost, and others) Mr. *Miller* was elected and returned.

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fixing election, they cannot of themselves do so; an election holden under such circumstances illegal.

1 Wight, 384.

38 Journ. 18.  
26. 295. 315.

The lord provost gave no notice of any meeting for the appointment of the election till he was about to go out of office, when he gave such notice for a day which would be in the time of his successor, to whom, upon his coming into office, he forwarded the precept, which had been kept unexecuted from the 11th September to the 3d October. An election was then holden before the new lord provost, in the usual manner, and sir *Lawrence Dundas* was chosen, and an indenture of his return made out, and tendered to the sheriff, who was required to annex it to the writ; he, however, refused to comply with this requisition, giving



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for his reason, that he had already returned the writ, with an indenture annexed to it, certifying the election of Mr. *Miller*.

Sir *Lawrence Dundas* petitioned, complaining of the election and return of Mr. *Miller*; and the committee resolved, that sir *Lawrence Dundas* was duly elected, and that Mr. *Miller* was not duly elected (*a*).

Elections for districts of boroughs.

With respect to elections for districts of boroughs :

App. cxxii.  
No notice necessary.

The time of the election being positively fixed in all cases, by the effect of the statute 6 Ann. c. 6. § 5, no notice is necessary.

(*a*) In addition to the irregularity of the proceeding at Mr. *Miller*'s election, another ground insisted upon was, that the extraordinary deacons had no right to vote in any of the proceedings, and if this point had been established, Mr. *Miller*'s election would have been also invalidated upon that ground; the committee, however, resolved, that in the election of a member for the city of *Edinburgh* the extraordinary deacons had a right to vote; but although this resolution was communicated to the agents for the parties, it was not reported by the committee to the house. There were also other points insisted upon, but the leading features of the case are those above mentioned.



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SECTION 3. *Ireland.*

WITH respect to election for knights of County elections.  
shires:

The stat. 57 Geo. 3. c. 131. § 3 (a), requires the sheriff, within two days after the receipt of the writ, to cause proclamation to be made at the place where the ensuing election ought by law to be holden, and to cause to be affixed on the door of the county court-house, public notice, signed by himself, of a special county court to be there holden, for the purpose of such election only, on any day, *Sunday* excepted, not later from the day of making such proclamation and affixing such notice, than the sixteenth day, nor sooner than the tenth.

(a) The stat. 57 Geo. 3. c. 131. § 37, (*App. ccccxvi.*) enacts, that all former acts of parliament made for the regulation of the election of members to serve in parliament for places in *Ireland* not theretofore repealed, are thereby confirmed and re-enacted, except as the same are therein amended or altered.

As this act will be fre-

quently referred to, it may be proper to mention here, that by § 29, any returning officer neglecting to perform his duty according to the provisions of the act, is to forfeit £10, with treble costs, for each and every instance of refusal or neglect, to the person suing for the same, at any sessions of the peace, within 12 calendar months.

*App. ccccxiii.*



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Elections for  
places being  
counties.

App. ccxl.  
Notice, &c. to  
be 10 days at  
least.

With respect to elections for places being counties of themselves :

By the *Irish* stat. 35 Geo. 3. c. 29. § 4, the sheriff or sheriffs must cause notice of the time and place of election, under his or their hand, to be affixed in the usual place of such city or town ; which notice is hereby directed to be ten days at the least preceding the day of election.

Elections for  
boroughs, &c.

App. ccxl.

Returning of-  
ficer to give  
notice in writ-  
ing, &c. to be  
affixed in the  
usual place ;  
notice to be  
four days at  
least.

With respect to elections for other places :

By the *Irish* stat. 35 Geo. 3. c. 29. § 3, the officer to whom the precept is delivered, and who is to hold the election, is to cause notice, under his hand, of the time and place of election, to be affixed in the usual place of the borough ; and this is to be done four days at the least preceding the day of election.



## CHAPTER VII.

## OF THE PLACE OF ELECTION.

SECTION 1. *At what places the election is to be holden ;  
and as to adjournment of place during the election.*

SECTION 2. *Scotland.*

SECTION 3. *Ireland.*

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WITH respect to elections for knights  
of shires :

By the common law, the election might have been at any place within the county, there being no restriction herein upon the sheriff as to his holding his county court.

In particular counties, the place for holding such courts was fixed by several early statutes (*a*) ; but there was no general provision

(*a*) The stat. 2 & 3 Edw. 6. c. 25. § 3, enacts, that the county court for Northumber-  
land shall be holden at Alnwick.  
The stat. 19 Hen. 7. c. 24,



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County elections to be holden at the most public

until that of the statute 7 and 8 W. 3. c. 25. § 3(a), which directs that at every such election the sheriff shall hold his county court at the

enacts, that the county court for *Sussex* shall be held alternately at *Chichester* and *Lewes*.

The stat. 27 Hen. 8. c. 26.

§ 3, enacts, that for *Monmouthshire* it shall be holden in like manner at *Monmouth* and *Newport*; and § 5, that for *Brecknockshire* it shall be holden at *Brecknock*; and § 6 enacts, that for *Radnorshire* it shall be holden alternately at *New Radnor* and *Rothergowy*.

So by § 7, for *Montgomeryshire*, at *Montgomery* and *Maghenleth*; and by § 8, that for *Denbighshire* at *Denbigh* and *Wrexham*.

The stat. 33 Hen. 8. c. 13, directs, that for *Chester* it shall be holden in the shire-hall for that county. These statutes do not particularly contemplate the courts for elections.

(a) The stat. 7 & 8 W. 3. c. 25. (*For the title of the act, and § 1 and 2, see ante, 347, 348.*)

§ 3. “ And be it further enacted, by the authority aforesaid, that upon every election to be made of any knight or knights of the shire to serve in this present, or any future parliament, the sheriff of the county where such election shall be made, shall hold his county court

“ for the same election at the  
“ most public and usual  
“ place of election within the  
“ said county, and where the  
“ same has most usually been  
“ for forty years last past, and  
“ shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ, or upon the same day, and then shall adjourn the same court to some convenient day, giving ten days notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be required for determination thereof, then the said sheriff, or in his absence his under sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said poll, in some open or public place or places, by the same sheriff, or his under sheriff as aforesaid, in his absence, or others appointed for the taking thereof as aforesaid; and for the more due and orderly proceeding in the said poll, the said sheriff, or in his absence



most public and usual place within the county, and where the same has been most usually holden, for forty years last past.

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and usual place in the county, and where usually holden last 40 years.

This statute is only directory; and although the non-observance of it will subject the she-

(For instances where the operation of this clause was suspended, see ante, 315, n. b.)

“ his under sheriff, or such as  
 “ he shall depute, shall ap-  
 “ point such number of clerks  
 “ as to him shall seem meet  
 “ and convenient for tak-  
 “ ing thereof; which clerks  
 “ shall all take the said poll,  
 “ in the presence of the said  
 “ sheriff or his under sheriff,  
 “ or such as he shall depute;  
 “ and before they begin to  
 “ take the said poll, every  
 “ clerk so appointed shall, by  
 “ the said sheriff or his under  
 “ sheriff as aforesaid, be sworn  
 “ truly and indifferently to  
 “ take the same poll, and to  
 “ set down the names of each  
 “ freeholder, and the place  
 “ of his freehold, and for  
 “ whom he shall poll, and  
 “ to poll no freeholder who is  
 “ not sworn, if so required by  
 “ the candidates, or any of  
 “ them, (which oath of the  
 “ said clerks, the said sheriff  
 “ or his under sheriff, or such  
 “ as he shall depute, are here-  
 “ by empowered to admi-  
 “ nister), and the sheriff, or  
 “ in his absence his under  
 “ sheriff as aforesaid, shall  
 “ appoint for each candidate  
 “ such one person as shall be

“ nominated to him by each  
 “ candidate, to be inspectors  
 “ of every clerk who shall  
 “ be appointed for taking the  
 “ poll,” &c. (*The remainder of  
 this section relates to the oath  
 which might thereby be required  
 to be taken by freeholders be-  
 fore polling, but which has  
 been since altered by the 10  
 Ann. c. 23, and again by the  
 18 Geo. 2.*)

§ 4 *Made it perjury to take  
 such freeholders oath falsely.)*

§ 5. “ And be it further  
 “ enacted, by the authority  
 “ aforesaid, that the said she-  
 “ riff, or in his absence his  
 “ under sheriff, or such as he  
 “ shall depute as aforesaid,  
 “ shall, at the same place of  
 “ election, proceed to the poll-  
 “ ing all the freeholders then  
 “ and there present, and shall  
 “ not adjourn the county  
 “ court then and there held,  
 “ to any other town or place  
 “ within the same county,  
 “ without the consent of the  
 “ candidates, nor shall, by  
 “ any unnecessary adjourn-  
 “ ment, in the same place of  
 “ election, protract or delay  
 “ the election; but shall duly



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Election hold-  
en at another  
place in the  
county not  
therefore void.

riff to answer for a breach of his duty, yet in a case where this requisition had not been complied with, the election was nevertheless holden to be valid.

32 Journ. 756.  
864. 904, 905.

*Pembrokeshire*, 5th and 27th April, 1770. One of the grounds of the petition against the election of Mr. *Owen*, was, that the election had been holden at *Pembroke*, whereàs it ought to have been holden at *Haverfordwest*, where it was alleged the election had been holden for forty years last past, except in one instance, about thirty years before, and that the latter was the more convenient place.

It appeared in evidence, that there had been two instances between 1696 and 1727, besides the one alluded to in the petition, viz. that in 1741, wherein the election had been holden at *Pem-*

“and orderly proceed in the  
“taking of the said poll, from  
“day to day and time to  
“time, without any further  
“or other adjournment, with-  
“out the consent of the can-  
“didates, until all the free-  
“holders then and there pre-  
“sent shall be polled, and no  
“longer.”

§ 10. “Provided also, and  
“be it enacted, by the autho-  
“rity aforesaid, that the she-  
“rm of the county of *So th-*

“*ampton*, or his deputy, at  
“the request of one or more  
“of the candidates, for elec-  
“tion of a knight or knights  
“for that county, shall ad-  
“journ the poll from *Win-*  
“*chester*, after every free-  
“holder then and there pre-  
“sent is polled, to *Newport*  
“in the *Isle of Wight*, for the  
“ease of the inhabitants of  
“the said island; any thing  
“in this act contained to the  
“contrary notwithstanding.”



*broke.* The evidence as to its being an inconvenient place was contradictory. The house resolved that Mr. *Owen* was duly elected.

Sect. 1.

With respect to elections for places being counties of themselves, and for other places:

At other elections;

There is no positive provision of the law as to (a) the place of election (b). It should seem that the election ought to be within the place to be represented; but, that with that qualification the returning officer may use his own discretion; in this, however, as in other points, any departure from the usual practice is attended with responsibility, and it will behove him to shew that he had good grounds for so doing (c).

no fixed place of election; it seems it ought to be within the place;

safest to abide by the practice.

Elections for cities and boroughs in *Wales* and *Monmouthshire*, are, by the stat. 35 Hen. 8. c. 11. § 3, to be at lawful and reasonable places; but there is no further definition of the law.

Wales and Monmouthshire elections where to be. App. li.

With respect to elections for *Glamorganshire*:  
—The stat. 55 Geo. 3. c. 72 (d) directs the she-

(a) See as to elections at *Coventry*, post. 588.

(b) See per lord *Ellenborough*, Ch. J. in the case of *Morris v. sir Francis Burdett*, 1 Campb. N. P. R. 223, post.

(c) Mr. Serjeant *Heywood* mentions that it was holden, in the case of *Winchelsea*, 7th February, 1775, that a returning officer could not change the place of election to one of which he had not given notice. Co. El. 346.

(d) The stat. 55 Geo. 3. c. 72. “An act to fix the election for Glamorganshire at a central place within the said county.” [7th June, 1815.]

“Whereas it is expedient  
“that the elections of knights  
“to serve in parliament for  
“the county of *Glamorgan*  
“should be holden and de-  
“termined at a convenient  
“and central place within  
“the said county;” be it  
therefore enacted, &c., that



## Sect. 1.

Glamorgan-  
shire elections,  
where to be.

riff to hold his county court for the election, and every adjournment thereof, at *Bridgend*, and to proceed to and determine the election there, and at no other place.

2. As to adjournment of place during the election :

Formerly she-  
riff might ad-  
journ court for  
county elec-  
tion.

The sheriff had the power of adjourning the county court when convened for the purpose of election, from the place where the proceedings had commenced, to any other within the county; nor was the consent of the freeholders at all necessary thereto (*a*).

Consent of  
freeholders not  
necessary.

10 Journ. 486,  
487. Heyw. co.  
El. 386.

*Cardiganshire*, 28th November, 1690. The election was properly to be holden at *Aberyst*

“ upon every election to be  
“ made of any knight to serve  
“ in this present or any future  
“ parliament for the county  
“ of *Glamorgan*, the sheriff of  
“ the said county shall hold  
“ his county court for the  
“ same election and every ad-  
“ journment thereof at the  
“ town of *Bridgend*, within  
“ the said county, and shall  
“ proceed to and determine  
“ the said election at the said  
“ town of *Bridgend*, and at  
“ no other place.

(*a*) On a motion for an attachment against F. *et al.* for a riot, &c. at a meeting of the county of *Essex*, for the election of a coroner, the dispute arose on the sheriff's offering to adjourn it from C. to D. The gentlemen apprehended, as they were

judges of the court, *i. e.* suitors, they might adjourn only, and that the sheriff could not. Ch. J. and two judges held, that the power of adjourning on the occasion of election of verderors, knights of the shire, &c. was in the sheriff, it was his court, and so called in acts of parliament, &c. *Eyre*, J. doubted, but admitted that the sheriff had power to appoint the meeting, yet when the court was assembled (it being no more than an assembly of people to exercise a jurisdiction) they made a necessary part, and the sheriff alone could not adjourn. Trin. 5 Geo. 3. B. R. *The King v. Fitz.* But *Eyre* afterwards *mutavit opinionem.* 7 V. in. 7, pl. 10.



## Sect. 1.

*with*; the poll was commenced there, and continued until the day of the return of the writ, when the sheriff adjourned to *Cardigan*, and this appears to have been done against the inclination of the freeholders. The election of sir *Carbury Price* was sought to be impeached, upon the ground that such adjournment was illegal. But the committee resolved, and the house agreed, that such adjournment was “a legal and good adjournment.”

Such adjournments, however, are now restricted to cases where the candidates consent, the stat. of 7 and 8 Will. 3. c. 25. § 5 (*a*), having forbidden them in other instances; an exception however is made by the act, with regard to the county of *Southampton*.

County court for election cannot be adjourned except by consent of candidates.

With respect to elections for the county of *Southampton*:

It is provided, by § 10 (*b*) of the same statute, that at the request of one or more of the candidates, an adjournment shall be made from *Winchester*, to *Newport*, in the *Isle of Wight*, for the ease of the inhabitants of that island (*c*).

But that the county of *Southampton* may, on request of one or more candidates, be adjourned from *Winchester* to *Newport*.

(*a*) For this clause see *ante*, 519, 520.

(*c*) As to the time for making this adjournment, see

(*b*) For this clause see *ante*, 520. *post*.



## Sect. 1.

Elections for  
Norwich.

App. lxvii.

Votes of free-  
men confined  
in gaol for  
debt may be  
taken there.With respect to elections for *Norwich* :

The stat. 3 Geo. 2. c. 8, recognizes a partial adjournment of the court for holding the election, having provided that one of the checks, a swearer, and a clerk, shall be admitted into the common gaol, or other prison, to take the votes of such freemen confined for debt as shall have a right to vote at such election.

SECTION 2. *Scotland.*County elec-  
tions,

WITH respect to elections for commissioners of shires :

App. xciv.  
xcviii.

By the *Scots* stat. of 1427, c. 101, confirmed by that of 1587, c. 114, the commissioners for shires were to be chosen at the head court of the shire.

App. cxxi.

to be at the  
head borough  
of the shire.

The stat. 6 Ann. c. 6. § 5, in directing the notice for meeting for election, appoints it to be at the head borough of the shire or stewartry (*a*).

(*a*) With respect to elections for *Edinburgh*, the stat. 6 Ann. c. 6, gives no direction as to the place; it would therefore be probably sufficient if holden any where within the city.



With respect to elections for districts of boroughs :

Sect. 9.

Elections for districts of boroughs,

The election is, by the stat. 6 Ann. c. 6. § 5, appointed to be at the presiding borough. Each borough of the district becomes the presiding borough in its turn, such turn having been originally settled by the act of union, to be according to the order in which they were called in the rolls of the parliament of *Scotland* (a); the same turn continuing to be observed.

App. cxxi.

to be at the presiding borough.

App. cxv. cxvi. Presiding borough, how ascertained.

In the event of a vacancy during a parliament, by the above clause, the same borough which presided at the election of the member creating the vacancy, is also to preside at the election to supply it.

App. cxxii. How on vacancy.

It has occasionally occurred, that the elections of magistrates and town counsellors of the royal boroughs in *Scotland* have been reduced (b), and made void, by decrees of the court of session, by which the corporate powers of such boroughs are in a state of non-existence

When election of magistrates and counsellors of borough which ought to preside, reduced,

(a) This order is to be found in the *Appendix*, cxiv. such reduction, and upon the mode of restoring boroughs to

(b) See Mr. *Wight's* observations as to the effect of the crown, chap. 1. 357, *et seq.* and see *ib.* 486.



Sect. 2.

App. clxxxii.

borough next  
in turn to pre-  
side.

until restored by the crown. This is recited by the stat. 14 Geo. 3. c. 81. § 2, as well as that no provision had been made for regulating the manner, and settling the place of election, where this is the case with respect to the borough which ought in course to have been the presiding borough; and it is thereby directed, that in every election of a burgess, where the election of the magistrates and council is so reduced, and not revived, the next borough entitled to preside, shall be the presiding borough, and the election shall be made at that borough (a).

District of  
Wigton, &c.

With respect to elections for the district of *Wigton, &c.*:

App. cxlix.

It is recited, by the stat. 7 Geo. 2. c. 16. § 11, that there had been some mistakes in this dis-

(a) See the case of the district of *Haddington, &c.* 1768, 1 *Wight*, 370, (which probably gave rise to the above statute), where it being the turn of *Jedburgh* to preside, but the election of magistrates and town counsellors having been reduced, it was disputed which borough was to preside, and three elections were holden. Colonel *Warrender*, however, was returned alone, his election depending upon *Dunbar*,

the borough next in turn, having the legal right to preside. He was petitioned against; but in this instance the petition against his return was withdrawn. But having vacated upon an acceptance of office, and being chosen again under the same circumstances, Mr. *Ogilvie* petitioned against his return. Colonel *Warrender* was, however, holden duly elected.



trict, in relation to their presiding at elections, which might occasion disputes at future elections; and thereby enacted, that they should continue to preside in the course in which they then were, that *Wigton* should preside at the next election, and that the other boroughs of the district should preside afterwards, in the method prescribed in the *Scots* act of 1707, adopted by the act of union.

Sect. 2.

Order of presiding settled.

SECTION 3. *Ireland.*

BY the *Irish* statute, 35 Geo. 3. c. 29, § 2, every election for a knight of a shire is to be where the assizes for such county were last holden previous to such election.

App. cccxxix.  
County elections to be where assizes last holden.

That for the county of *Dublin*, is, by the same clause, to be holden where the sessions of the peace were last previously holden.

That for the county of *Dublin* where sessions of the peace.

There are no statutory regulations as to the place of holding other elections (*a*).

(*a*) The 4th and 5th sections of the above act respectively direct the notice of election for other places, and for



Sect. 3.  
County elec-  
tions.

As to adjournment of place during the elec-  
tion:

App. ccxxxix.  
Sheriff is not  
to adjourn to  
any other  
place.

With respect to elections for knights of shires,  
*Irish* statute 35 Geo. 3. c. 29. § 2, the sheriff  
being directed to proceed to election at the  
places above pointed out, is also forbidden to  
adjourn to any other town or place, during the  
election.

cities and towns being coun- the place of election in either  
ties, to be given at the usual case.  
place, but do not point out



## CHAPTER VIII.

## OF THE DAY OF ELECTION.

SECTION 1. *Of appointing the day of election.*

SECTION 2. *Scotland.*

SECTION 3. *Ireland.*

**T**HE day of election is appointed by the respective returning officers, under certain rules, which depend, in the first instance, upon the delivery of the writ or precept to such officers; none of the regulations which are about to be stated beginning to operate until such delivery.

With respect to elections for knights of the shire:

The direction of the stat. 7 Hen. 4. c. 15 (a),

|                                                                                                                                            |                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(a) The stat. 7 Hen. 4. c. 15. "The manner of the election of knights of shires for a parliament."</p> <p>"Item, our lord the king,</p> | <p>"at the grievous complaint of his commons in this present parliament, of the undue election of the knights of counties for the parliament,</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|



## Sect. 1.

County elections depended upon the falling of the court, together with certain statutory regulations.

as well as that of the 7 and 8 Will. 3. c. 25.

§ 3 (a), was, that the election should be at the next county court after the delivery of the writ.

This provision, however, could not always conveniently be complied with, as it happened occasionally that the next county court was holden either on the day of (b), or immediately

“ which be sometimes made  
 “ of affection of sheriffs, and  
 “ otherwise against the form  
 “ of the writs directed to the  
 “ sheriff, to the great slander of  
 “ the counties, and hindrance  
 “ of the business of the com-  
 “ monalty in the said county;  
 “ (2) our sovereign lord the  
 “ king, willing therein to pro-  
 “ vide remedy, by the assent of  
 “ the lords spiritual and tem-  
 “ poral, and the commons, in  
 “ this present parliament as-  
 “ sembled, hath ordained and  
 “ established, that from hence-  
 “ forth the elections of such  
 “ knights shall be made in  
 “ the form as followeth; (that  
 “ is to say) at the next county  
 “ court to be holden after the  
 “ delivery of the writ of the  
 “ parliament, proclamation  
 “ shall be made in the full  
 “ county of the day and place  
 “ of the parliament, (3) and  
 “ that all they that be there  
 “ present, as well suitors duly  
 “ summoned for the same  
 “ cause as other, shall attend  
 “ to the election of the knights  
 “ for the parliament, (4) and  
 “ then, in the full county,  
 “ they shall proceed to the  
 “ election freely and indif-  
 “ ferently, notwithstanding  
 “ any request or command-  
 “ ment to the contrary; (5)  
 “ and after that they be cho-  
 “ sen, the names of the per-  
 “ sons so chosen (be they pre-  
 “ sent or absent) shall be  
 “ written in an indenture, un-  
 “ der the seals of all them  
 “ that did choose them, and  
 “ tacked to the same writ  
 “ of the parliament, which in-  
 “ denture so sealed and tack-  
 “ ed shall be holden for the she-  
 “ riff's return of the said writ,  
 “ touching the knights of the  
 “ shires. (6) And in the writs  
 “ of the parliament to be  
 “ made hereafter, this clause  
 “ shall be put. *Et electionem*  
 “ *tuam in pleno conitatu tuo*  
 “ *factam, distincte et aperte*  
 “ *sub sigillo tuo et sigillis*  
 “ *eorum qui electioni illi in-*  
 “ *terfuerint, nobis in cancel-*  
 “ *laria nostra ad diem et lo-*  
 “ *cum in brevi contentos certi-*  
 “ *fices indilate.*”

(a) For this statute, see *ante*, 518.

(b) This happened in the county of *Essex* in the reign of Charles 2.; and moreover



after the receipt of the writ; or sometimes, on the other hand, so shortly before the meeting of parliament (*a*), as that the members chosen could not attend at the opening; and even in some instances, there was no county court in the interval between the delivery of the writ and the day of parliament (*b*).

Wherefore the last mentioned statute, in requiring the sheriff to proceed to election at the next county court, provided that if the same should fall out to be held within six days after the receipt of the writ, or upon the same day, he should adjourn the court to some convenient day, giving the notice thereby required.

the day of the county court was during the assizes. By advice of the judges, the sheriff proceeded to the election without any previous proclamation or adjournment. Whitel. 355.

(*a*) In *Wiltshire*, in the 8 Edw. 2. and in *Devonshire*, 28 Hen. 6. the election and return being only two days before the meeting of parliament, those who were elected could not in those days possibly reach *Westminster* in so short a time. Heyw. Co. El. 39, and the authorities there cited.

(*b*) This happened in the 1 Edw. 3. in the county of *Sussex*, and in the 29 Hen. 6. in that of *Leicester*. Heyw. Co. El. 39. See also *Cambridgeshire* and *Caernarvonshire*, 6th and 10th November, 1640. 2 Journ. 21. 25.

*Pembrokeshire*, 5th and 27th April, 1770, (*ante*, 520), the sheriff evaded the statute of W. 3. by putting off the county court, so as to prevent its happening within six days of the receipt of the writ, and the election at such deferred court was holden good. 32 Journ. 864. 905.



## Sect. 1.

This latter enactment was recited by the stat. 18 Geo. 2. c. 18. § 10 (a), and also that sheriffs had frequently, in such cases, made long adjournments, in order to delay proceeding to election, for remedy whereof, it forbade the sheriff, in any case, to adjourn such court for longer than sixteen days.

The time of the election now no longer de-

(a) The stat. 18 Geo. 2. c. 18. § 10. "*An act to explain and amend the laws touching the elections of knights of the shires to serve in parliament for that part of Great Britain called England.*"

§ 10. "And whereas by an act made in the seventh and eighth years of the reign of king William the third, intituled, *An act for the further regulating elections of members to serve in parliament, and for the preventing irregular proceedings of sheriffs and other officers in the electing and returning such members*, it is enacted, that upon every election to be made of any knight or knights of the shire, the sheriff of the county where such election shall be made, shall proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ, or upon

"the same day, and then shall adjourn the same court to some convenient day, giving ten days notice of the time and place of election; and whereas sheriffs have frequently in such cases, where the county court fell out to be held within six days after the receipt of the writ, or upon the same day, made long adjournments of the same, in order to delay proceeding to election:" "For remedy thereof for the future, be it enacted by the authority aforesaid, that from and after the said twenty-fourth day of June, [1745], no sheriff shall in such case take upon himself to adjourn such court for longer than sixteen days, any law, usage, or custom, to the contrary notwithstanding."

(For § 11, see *post*, 536; for § 7, see *post*, 343.)



pend upon that of the next ordinary county court, the sheriff being required in all cases to appoint a special county court, expressly for this purpose only.

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The stat. 25 Geo. 3. c. 84. § 4 (a), after reciting, that inconveniencies might arise from

Special county court for election to be pro-

(a) The stat. 25 Geo. 3. c. 84. "An act to limit the duration of polls and scrutinies, and for making other regulations touching the election of members to serve in parliament for places within England and Wales, and for Berwick upon Tweed; and also for removing difficulties which may arise for want of returns being made of members to serve in parliament."

§ 4. "And whereas inconveniencies may arise from the time allowed by the laws now in being for proceeding to an election of a knight or knights to serve in parliament, for any county or shire in England or Wales:" Be it enacted, that immediately after the receipt of the writ for making any such election, and indorsing on the back thereof the day of receiving the same, as by law required, it shall and may be lawful for the sheriff of such county or shire, and he is hereby required,

"within two days after the receipt thereof, to cause proclamation to be made at the place where the ensuing election ought by law to be holden, of a special county court to be there holden for the purpose of such election only, on any day, Sunday excepted, not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day; and that he shall proceed in such election, at such special county court, in the same manner as if the said election was to be held at a county court, or at an adjourned county court, according to the laws now in being: provided always, that the usual county court for all other purposes, or any adjournment made thereof, shall take place, be held, and proceeded in, by the sheriff, or his deputy, and may from time to time be further adjourned and proceeded in, in such and the same manner, and at



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claimed; not to be later than sixteen, nor earlier than ten days from proclamation.

(*Ante*, 502.)

the time then allowed for proceeding to election, and commanding the sheriff to make proclamation, as before mentioned, of a special county court for the election, by the requisition already noticed, that such court shall be not later from the day of making the proclamation, than the sixteenth day, nor sooner than the tenth, thereby reduces the latitude of the discretion of the sheriff to the choice of some one of eight days; there being two days on one of which he must proclaim the holding of the court, and six days on one of which it must be holden.

There were also some further regulations with respect to the day of the week, whereupon the county court for the election might be holden, or to which it might be adjourned. These depended upon the statutes 7 and 8 Will. 3. c. 25. § 9 (*a*), and 6 Geo. 2.

“the same times and places,  
“as if the writ for the election  
“of a knight or knights of  
“the shire had not been re-  
“ceived.”

(*a*) The stat. 7 & 8 W. 3. c. 25. (*For the title and* § 1, 2, *see ante*, 347. *For* § *see ante*, 518.)

§ 9. “And whereas the coun-  
“ty court of the county of  
“York is by custom called and  
“held upon *Mondays*, which  
“hath long been complained

“of to be a very inconvenient  
“day to all the suitors there-  
“unto, who at the elections  
“of knights of the shire, and  
“all services at other times,  
“are forced to travel upon  
“Sundays to their attendance  
“there, to their very great  
“dissatisfaction and griev-  
“ance:” “Be it therefore en-  
“acted, by the authority afore-  
“said, that all county courts,  
“after the five and twentieth  
“day of March, one thousand



c. 23 (a). These provisions, however, were principally repealed by the statute 18 Geo. 2.

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“six hundred and ninety-  
“six, held for the county of  
“York, or any other county  
“courts which heretofore used  
“to be held on a *Monday*,  
“shall be called and begun  
“upon a *Wednesday*, and not  
“otherwise, any custom or  
“usage to the contrary not-  
“withstanding.”

(a) The stat. 6 Geo. 2. c. 23.  
“An act to explain and amend  
“an act made in the seventh  
“and eighth years of the reign  
“of king *William the third*,  
“intituled, *An act for the fur-*  
“*ther regulating elections of*  
“*members to serve in parlia-*  
“*ment, and for the preventing*  
“*irregular proceedings of she-*  
“*riffs and other officers in the*  
“*electing and returning such*  
“*members, so far as the same*  
“*relates to the holding of*  
“*county courts.*”

“Whereas by an act passed in  
“the seventh and eighth years  
“of the reign of king *William*  
“the third, intituled, *An act*  
“*for the further regulating*  
“*elections of members to serve*  
“*in parliament, and for the*  
“*preventing irregular proceed-*  
“*ings of sheriffs and other of-*  
“*ficers in the electing and re-*  
“*turning such members*, it  
“was, amongst other things,  
“enacted, that the sheriff of  
“any county, upon the elec-

“tion to be made of any knight  
“or knights of the shire,  
“should proceed to election  
“at the next county court,  
“unless the same should fall  
“out to be held within six  
“days after the receipt of the  
“writ, or upon the same day,  
“and then should adjourn the  
“said court to some conve-  
“nient day, giving ten days  
“notice of the time and place  
“of election; and whereas by  
“the same act it was also en-  
“acted, that all county courts  
“held for the county of *York*,  
“or any other county courts  
“which were used to be held  
“on a *Monday*, should from  
“thenceforth be called and  
“begun on a *Wednesday*;  
“and whereas there was no  
“express provision to prevent  
“the adjournment of any  
“county court to a *Monday*,  
“whereby doubts have arisen  
“whether the same might not  
“be adjourned to a *Monday*,  
“which is declared by the  
“said act to be a very incon-  
“venient day to all the suitors  
“thereunto, which hath given  
“occasion to county courts  
“being frequently adjourned  
“over to a *Monday*, to the  
“great inconvenience of such  
“suitors, who, at elections  
“for knights of the shire, and  
“their services at other times,  
“are thereby obliged to tra-



## Sect. 1.

Election may  
be on any day  
except Sunday.

c. 18. § 11 (a); and the statute of 25 Geo. 3.  
c. 84, authorizes the holding of the special

“ vel on *Sundays*; and where-  
“ as there is no provision made  
“ by the said act with relation  
“ to not adjourning county  
“ courts to a *Friday* or *Satur-*  
“ *day*, which is as inconveni-  
“ ent to all the suitors as if  
“ the same were adjourned to  
“ a *Monday*.” “ For remedy  
“ whereof be it therefore en-  
“ acted, by the king’s most  
“ excellent majesty, by and  
“ with the advice and consent  
“ of the lords spiritual and  
“ temporal, and commons, in  
“ this present parliament as-  
“ sembled, and by the autho-  
“ rity of the same, that from  
“ and after the twenty-fourth  
“ day of June, one thousand  
“ seven hundred and thirty-  
“ three, no county court what-  
“ soever held within that part  
“ of *Great Britain* called  
“ *England*, shall be adjourn-  
“ ed to a *Monday*, a *Friday*,  
“ or *Saturday*, and that all  
“ and every such adjourn-  
“ ment and adjournments, and  
“ all and every act and deed  
“ done or performed at such  
“ courts so adjourned, shall  
“ be deemed, adjudged, and  
“ taken to be utterly null and  
“ void to all intents and pur-  
“ poses whatsoever, any law,  
“ custom, or usage to the  
“ contrary thereof in any wise  
“ notwithstanding.”

§ 2. “ Provided neverthe-  
“ less, that any county court

“ began, holden on, or ad-  
“ journed to a day not pro-  
“ hibited by this act, or the  
“ said other recited act, for  
“ electing any knight or  
“ knights of the shire for any  
“ county, or for hearing and  
“ determining causes, or such  
“ other matters and business  
“ as are usually transacted at  
“ county courts within the li-  
“ mits aforesaid, may be ad-  
“ journed over from day to  
“ day, though the same may  
“ happen on a *Monday*, *Fri-*  
“ *day*, or *Saturday*, until  
“ such election, or such other  
“ matters as aforesaid, be fully  
“ finished and determined,  
“ any thing in this present act  
“ contained to the contrary in  
“ any wise notwithstanding.”

(a) The stat. 18 Geo. 2. c.  
18. (*For the title and § 10, see*  
*ante*, 532. *For § 7, see post*,  
543.)

§ 11. “ And whereas by an  
“ act made in the sixth year  
“ of the reign of his present  
“ majesty, intituled, *An act*  
“ *to explain and amend an act,*  
“ *made in the seventh and*  
“ *eighth years of the reign of*  
“ *king William the third, in-*  
“ *tituled, An act for the fur-*  
“ *ther regulating elections of*  
“ *members to serve in parlia-*  
“ *ment, and for the preventing*  
“ *irregular proceedings of she-*  
“ *riffs, and other officers, in*



county court for the election on any day except *Sunday*.

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With respect to elections at places being counties:

Elections for places being counties,

The election at every such place, is, by the stat. 19 Geo. 2. c. 28. § 7 (a), to be within eight

to be within eight days after receipt of writ.

"the electing and returning  
"such members, so far as the  
"same relates to holding of  
"county courts; it is, among  
"other things, enacted, that  
"no county court whatsoever  
"held within that part of  
"Great Britain called Eng-  
"land, shall be adjourned to  
"a Monday, a Friday, or  
"Saturday; and that all and  
"every such adjournment and  
"adjournments, and all and  
"every act and deed done or  
"performed at such courts so  
"adjourned, shall be deemed,  
"adjudged, and taken to be  
"utterly null and void to all  
"intents and purposes what-  
"soever; and whereas the  
"same hath been found in-  
"convenient," "Be it there-  
"fore enacted, by the autho-  
"rity aforesaid, that from and  
"after the said twenty-fourth  
"day of June, so much of the  
"said act as is hereinbefore  
"recited shall be and is here-  
"by repealed."

28. "An act for the better re-  
"gulating of elections of mem-  
"bers to serve in parliament  
"for such cities and towns, in  
"that part of Great Britain  
"called England, as are coun-  
"ties of themselves."

§ 7. "And be it further  
"enacted, by the authority  
"aforesaid, that from and  
"after the said twenty-fourth  
"day of June, one thousand  
"seven hundred and forty-  
"six, the sheriff or sheriffs of  
"every city or town, being a  
"county of itself, and having  
"a right to elect a member  
"or members of parliament,  
"by virtue of the writ issuing  
"out of chancery, without  
"any precept thereupon, with-  
"in that part of Great Britain  
"called England, shall forth-  
"with, upon the receipt of  
"the writ for election of a  
"member or members to  
"serve in parliament for such  
"city or town, cause public  
"notice to be given of the

(a) The stat. 19 Geo. 2. c.



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(*Ante*, 502,  
503.)

days after the receipt of the writ by the sheriff or sheriffs, notice being given as before mentioned.

Elections for  
other places,

With respect to elections at other places:

to be within  
eight days af-  
ter receipt of  
precept.

The law is similar to that with respect to the elections last above mentioned. The election is, by the stat. 7 and 8 Will. 3. c. 25. § 1 (*a*), to take place within eight days after the receipt of the precept by the returning officer, a previous notice, in effect the same, being also required.

New Shore-  
ham.

*Append.* lxii.  
Election to be  
not later than  
twelve, nor  
sooner than  
eight days  
from receipt of  
precept.

The election at *New Shoreham* is, by the stat. 11 Geo. 3. c. 55. § 5, to be not later than twelve, nor sooner than eight days after the receipt of the precept by the returning officer.

Cricklade.  
*App.* lxxxiv.  
The like pro-  
vision.

The stat. 22 Geo. 3. c. 31. § 5, has made a similar provision with respect to elections to be holden at *Cricklade*.

“time and place of election,  
“and shall proceed to elec-  
“tion thereupon within the  
“space of eight days next  
“after that of his receipt of  
“the said writ, and give three

“days notice thereof at least,  
“exclusive of the day of the  
“receipt of the writ and of  
“the day of election.”

(*a*) For this clause, see  
*ante*, 347, 348.



And also the stat. 44 Geo. 3. c. 60. § 4, with respect to elections at *Aylesbury* (*a*), has in like manner regulated the day of holding such elections.

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*Aylesbury.*  
*App. lxxxviii.*  
The like provision.

SECTION 2. *Scotland.*

WITH respect to elections for commissioners of shires :

Elections for  
counties,

By the *Scots* act of 1681, c. 21, the diet of election is to be at least twelve days before the meeting of parliament.

*App. cvi.*  
to be at least  
twelve days  
before meeting  
of parliament;

By the stat. 35 Geo. 3. c. 65. § 1, the day of election appointed by the sheriff is not to be sooner than six free days, nor later than fifteen days after the day of publication at the church doors (*b*).

*App. clxxxv.*  
not sooner  
than six days,  
nor later than  
fifteen from  
publication at  
church doors.

With respect to elections of burgesses for districts of boroughs :

Elections for  
districts of bo-  
roughs,

(*a*) The provision of the 35 H. 8. c. 11. § 3, with respect to elections for places in *Wales* and *Monmouthshire*, directing them to be at a lawful and reasonable time, could not probably have now any operation independent of the 7 and 8 W. 3. c. 25.

(*b*) There is no particular day appointed for elections for the city of *Edinburgh*.



## Sect. 2.

*App. cxxii.*  
to be on the  
thirtieth day  
after teste of  
writ; if that  
happen on Sun-  
day, then on  
the next day.

There is no latitude as to the appointment of the day of election. Under the stat. 6 Ann. c. 6. § 5, the precept directs the delegates to assemble upon the thirtieth day after the day of the teste of the writ, unless it be upon *Sunday*, and in such case upon the next day, and then to choose their burgess for parliament.

SECTION 3. *Ireland.*

County elec-  
tions.

WITH respect to elections for knights of shires;

*App. ccxxxix.*  
Election to be  
not later than  
sixteen, nor  
sooner than  
ten days after  
proclamation  
and notice.  
*App. ccccxv.*

By the *Irish* stat. 35 Geo. 3. c. 29. § 2, the election was to be not sooner than ten, nor later than twenty days after the sheriff should have received the writ. But by the stat. 57 Geo. 3. c. 131. § 3. the election is to be not later from the day of proclamation and notice than the sixteenth, nor sooner than the tenth day; (and the proclamation as already stated must be within two days after the sheriff's receipt of the writ.)

*ante*, 515.

Elections for  
places being  
counties,

With respect to elections for places being counties of themselves;

*App. ccxl.*  
to be within  
twenty days,

By the *Irish* stat. 35 Geo. 3. c. 29. § 4, the election is to be within twenty days from the



day of receiving the writ; but as ten days notice is required, it cannot be until the expiration of that time, which in effect makes the rule the same as in the case of elections for knights of shires.

Sect. 3.

but cannot be  
sooner than  
ten.

With respect to other elections:

Other elec-  
tions,

By the *Irish* stat. 35 Geo. 3. c. 29. § 3, the officer to whom the precept is delivered is to hold the election thereupon, within twenty days from the day of his receiving the precept; and four days notice being required in this case, it cannot be within the first four.

App. ccxxxix.  
to be within  
twenty days  
after receipt of  
precept,  
but cannot be  
sooner than  
four.



## CHAPTER IX.

OF THE ERECTION OF BOOTHS FOR TAKING THE  
POLL.

SECTION 1. *In what cases booths for taking the poll are to be erected, and at whose expence.*

SECTION 2. *Scotland.*

SECTION 3. *Ireland.*

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**W**HEN there is reason to expect a contest at an election, where the electors are very numerous, it is usual, as a preliminary step for the convenience of all parties, for the candidates to cause booths to be erected for the purpose of taking the poll; but the law is not compulsory upon them, except that in certain cases, it will be seen, that the charges thereby incurred, are thrown rateably upon all the candidates, although perhaps some of them may not concur in desiring the measure.

County elections.

With respect to elections for knights of shires :



By the stat. 18 Geo. 2. c. 18. § 7 (a), the sheriff, or in his absence the under sheriff, or such as he shall depute, is, upon request by the candidates, or any of them, three days before the commencement of the poll, to take care that such number of convenient booths or places for taking the poll, as they or any of them shall desire, be erected at their expence, not exceeding the number of rapes, lathes, wapentakes, or

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On request by any candidate, three days before commencement of poll, (See *Wathen v. Sandys*, post, 551.) so many booths, &c. as desired, to be erected at expence of candidates; booths, &c. not to exceed num.

(a) The stat. 18 Geo. 2. c. 18. (*For the title of the act, see ante, 532. See § 10, ibid. § 11, ante, 536.*)

§ 7. "And be it further enacted, by the authority aforesaid, that from and after the said twenty-fourth day of June, one thousand seven hundred and forty-five, at every such election within that part of Great Britain called England, and dominion of Wales, the sheriff, or in his absence the under sheriff, or such as he depute, shall appoint, make, or erect, or cause to be appointed, made, or erected, at the expence of the candidates, such number of convenient booths or places for taking the poll as the candidates, or any of them, shall, three days at least before the commencement of the poll, desire, so as the

"same do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding in the whole the number of fifteen; and shall affix, or cause to be affixed, on the most public part of each of the said booths, or polling places, the name or names of the rape, wapentake, lathe, ward, or hundred, or rapes, wapentakes, lathes, wards, or hundreds, for which such booth or polling place is allotted or designed; and the said sheriff, or under sheriff, or such person as he shall depute, shall appoint a proper clerk or clerks at each of the said booths or polling places to take the poll, (which said clerk or clerks shall be at the expence of the candidates, and be paid not exceeding one guinea per day each



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ber of rapes,  
&c. nor to be  
more than fif-  
teen.

hundreds, within the county, nor exceeding in the whole fifteen in number.

The provisions of the act are confined to cases where the request is made in manner above stated. If, therefore, a contest unexpectedly arise, so as not to allow sufficient time for making the request according to the statute, the case of a county election would, in this respect, be similar to that for any other place.

Names of  
rapes, &c. to  
be affixed on  
booths, &c.

List of towns,  
&c. within the  
rape, &c. for  
which each  
booth allotted,

By the above clause of the stat. 18 Geo. 2. such sheriff, under sheriff, or deputy, is to affix, or cause to be affixed, upon the most public part of each of these booths, or polling places, the name or names of the rape or rapes (or whichever of the above divisions it may be), for which such booth or polling place is allotted; and is also to make out a list for each of such booths or polling places, of all the towns, villages, pa-

“ clerk), and the said sheriff,  
“ or under sheriff, shall also  
“ make out a list for each of  
“ the said booths or polling  
“ places respectively, of all  
“ the several towns, villages,  
“ parishes, and hamlets, lying,  
“ or being wholly or in part,  
“ in the rape, wapentake,  
“ lathe, ward, or hundred, or  
“ in the several rapes, wapen-

“ takes, lathes, wards, or hun-  
“ dreds, for which such booth  
“ or polling place is allotted  
“ or designed; and shall,  
“ upon request made, deliver  
“ a true copy thereof to any  
“ of the candidates, or their  
“ agents, who shall desire the  
“ same, taking for each of  
“ the said copies the sum of  
“ two shillings, and no more.”



ishes, and hamlets, which are wholly or in part within such of the above divisions as such booth or polling place is allotted for ; and on request, he is to deliver a copy to any candidate, or his agent ; receiving a fixed sum for the same.

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to be made out ;

copies to be given to candidates, &amp;c.

With respect to other elections :—There is no general provision for the erection of booths for taking the poll. However convenient such arrangement may be, it can only be adopted by agreement of the candidates ; the law leaving it to their discretion to act herein as they shall be advised, and imposing no liability upon them to defray such expence, unless upon agreement ; neither will the law infer any such liability from usage, however long and continued.—Questions have arisen as to the liability of candidates for expences of this nature (a). *Morris v. Sir F. Burdett*,

At other elections, (As to Westminster, see post. 559.)

no general regulations as to booths for taking the poll.

(a) The case of *Honeywood v. Sir W. Geary*, Sit. a. H. T. 46 G. 3. C. P. though it regarded a county election, does not appear to have been in respect of expences under the statute. In principle, therefore, it is applicable generally. The action was to recover from the defendant a sum of money claimed to be due under the following circumstances.

In 1802, Sir E. Knatchbull, Sir W. Geary, and Mr. Honeywood, were candidates for the county of Kent ; on the 15th July Mr. H. had a considerable majority ; so much so that his election was deemed to be sure. Sir W. G. was lowest on the poll. A proposition was made by a friend

of Mr. H.'s (Mr. Leigh) to Mr. Larkins, who was at the head of Sir W. G.'s committee, that Sir W. G. should have the benefit of Mr. H.'s second votes, if he would contribute to the expence. It was then stated, that the proposition had been agreed to ; that he had such second votes, and by the effect of them finally succeeded ; and the action was for the share of the expences. Mr. Leigh was called, and was about to state what passed between him and Mr. Larkins, respecting the agreement for a junction of interest, and Mr. Larkins's undertaking, on the part of Sir W. G. to contribute to the expences.

\*

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1 Campb. N. P. Rep. 218. No liability in candidate (except in county elections,) to contribute to booths unless he undertake so to do.

S. H. T. 48 G. 3. K. B. An action was brought by plaintiff, who was high bailiff of *Westminster*, against the defendant, who was returned one of the representatives for that city, to recover from him a proportion of the expences incurred by the plaintiff as returning officer at the election; the most prominent item of which regarded the erection of the hustings(a). The election took place in May 1807, when five candidates were proposed, viz. right hon.

*Best*, Serj. objected, That such conversation should not be given in evidence; that no direct communication with Sir *W. G.* was proved: he might have delegated a power to his committee; but they constituted one body, and any orders to bind him should be the act of the majority of them; this was the act of one only, and could not be obligatory either on the committee at large, or on Sir *W. G.*—*Shepherd*, Serj. contended, That each member of the committee had authority: they were delegated by Sir *W. G.* to act for him. He cited a case as to the *Tewkesbury* election, in which evidence of the acts of an agent was admitted by *Ld. Kenyon* to bind the candidate. Here Mr. *Larkins* was the agent of Sir *W. G.* confessedly; he was the chairman of the committee; and gave orders for every part of the conduct of the election.—Evidence to that effect being given, *Mansfield*, C. J. observed, that it had been proved that the committee had full authority to act for Sir *W. G.*; that they had ordered chaises, and gave general orders respecting the elec-

tion, which Sir *W. G.* adopted, and had the benefit of; he should therefore hold Sir *W. G.* bound by an agreement so made by Mr. *Larkins* acting in that capacity. He therefore admitted Mr. *Leigh* to be examined. The verdict was for the plaintiff. 6 Esp. N. P. Rep. 119.

(a) The principal items of the plaintiff's demand were,

|                                                                                                 |      |    |    |
|-------------------------------------------------------------------------------------------------|------|----|----|
| 6 under bailiffs to attend proclamation of election                                             | £    | s. | d. |
|                                                                                                 | 6    | 6  | 0  |
| High constable's attendance                                                                     | 1    | 11 | 6  |
| Cryer, for proclamation and horse-hire                                                          | 5    | 15 | 6  |
| 24 poll-clerks, at 21s. and 5s. each                                                            | 468  | 0  | 0  |
| 24 staff-men, at 7s. 6d. and 2s. 6d. each                                                       | 180  | 0  | 0  |
| Table for high-bailiff, deputy, &c.                                                             | 120  | 0  | 0  |
| Two commissioners for administering the oaths of allegiance, &c. at 21s. and 5s.                | 39   | 0  | 0  |
| Bill for erecting hustings, and surveyor's fee for valuing same                                 | 553  | 10 | 10 |
| Bond of indemnity to church-wardens of <i>St. Paul's Covent-garden</i> , and incidental damages | 40   | 0  | 0  |
| Printer's bill for tickets, &c.                                                                 | 14   | 3  | 6  |
| Total                                                                                           | 1428 | 7  | 4  |

*Ridler v. Moore*,  
*Cliff. Southw.*  
*Ca. 371.*



lord *Cochrane*, right hon. *R. B. Sheridan*, sir *Francis Burdett*, bart. the defendant, *John Elliott*, esq. and *James Paul*, esq. This last gentleman, however, withdrew early in the contest, and paid his share of the expences then incurred.

The defendant was afterwards called upon for a fourth part of the sum which remained to be divided between himself and the other three candidates; but refused to pay any part of it, on the principle that a member of parliament should be elected free from all expence.

It was admitted or proved, in the course of the trial, that the charges were exactly such as had been made on similar occasions, as far back as could be remembered; that the sums mentioned in the particular had been disbursed by the plaintiff; that the defendant was confined to his bed by illness during the whole election; that before the poll began, a Mr. *Percy*, on the part of a committee of electors in the interest of the defendant, informed the plaintiff, that no part of the expence of the election would be defrayed by the defendant, or his friends (a),

(a) Mr. *Percy*, at the same time, delivered to the plaintiff, as his authority for this application, a minute of a



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but required him to supply them with tickets for the hustings; that the inspectors and poll-clerks acting in the interest of the defendant, had the same accommodation and privileges during the election as those of the other candidates; that a requisition was made by lord *Cochrane* for administering the prescribed oaths to Roman catholics, upon which commissioners were appointed for that purpose; that the defendant, upon the meeting of parliament, took his seat in the house of commons; and that the office of high bailiff was purchased for a considerable sum of money by the plaintiff (a).

resolution of the committee, of which the following is a copy:

“At a meeting of the committee of electors of *Westminster*, friends of sir *Francis Burdett*, bart. held at the *Britannia Coffee-house*, *Covent-garden*, on *Wednesday*, the 5th day of *May*, 1807,

*Mr. Francis Place*, in the chair,

“Resolved,

“That *Mr. Percy* do wait upon the high-bailiff, to request the necessary tickets for the hustings, and that *Mr. Percy* do likewise officially appoint the inspectors and check-clerks.

“*Francis Place*.”

(a) On the part of the plaintiff it was contended, that, under these circum-

stances, the plaintiff was entitled to recover to the full extent of his demand, his case being argued to the following effect. From the antiquity and notoriety of the different charges, a promise might be inferred on the part of every candidate to submit to them. The present defendant might not have personally interfered pending the election; but by subsequently taking his seat in the house of commons, he had acceded to the character of a candidate, and adopted the acts of his committee. The items in themselves could not be considered as unreasonable. Without the attendance of the staff-men and constables, it was impossible that the peace of the metropolis should be



Lord *Ellenborough*, in summing up the case to the jury, as far as regards the subject we are considering, thus laid down the law. “The defendant’s liability as to the hustings, will depend upon whether he has in any manner undertaken to defray a part of the expence of erecting them. In county elections, the sheriff is required to erect hustings, to be paid for by

preserved during the tumult of the election; and the whole of the clerks charged for were indispensably necessary to the taking of the poll. The hustings, if not equally necessary, at least contributed greatly to the convenience of the candidates as well as of the electors, and the tickets of admission to them had been expressly required by the defendant’s agent, which likewise rendered him liable for a share of the printer’s bill. The bond of indemnity to the church-wardens of the parish of *St. Paul, Covent-garden*, had always been required by them, before they would grant permission to erect the hustings in the usual place, near the church. As to the charge for commissioners to administer oaths to catholics, there could be no sort of doubt, it being enacted by stat. 34 Geo. 3. c. 73, that such commissioners shall be provided, upon the requisition of any one of the candidates, and

that the expence shall be defrayed by all the candidates, in equal proportions.

On the other side, it was maintained that there had been no assent on the part of the defendant, either express or implied, to be answerable for any part of these expences. Particular items he did not object to, denying his liability altogether. The defendant had himself been too ill during the whole of the election to know what was going forward; nor could he be conceived to have acceded to the acts of his committee by taking his seat in the house of commons, which he was bound and might have been compelled to do, after being legally returned as one of the representatives of the people in parliament. But the high-bailiff had received an express warning that he was to expect no contribution towards the expence of the election from sir *Francis Burdett* or his friends; and thus was the idea



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the candidates; but this act does not extend to cities or boroughs; and the returning officer here might have taken the poll either in the *Guildhall, Westminster*, or in the open air. Still, however, the candidates may make themselves liable for the expence of the hustings; and if *Percy* had authority from the defendant to demand tickets, I think the defendant is

of an implied undertaking completely negatived. The statute concerning the catholic oaths seemed to apply only to county elections; but even supposing the candidates were liable upon this score, the defendant could not be considered as a candidate within the meaning of the legislature, as his being proposed was entirely without his knowledge or consent; and this burthen might as well be thrown upon any obscure individual, started by some elector against his will, for the mere purpose of harassing and oppressing him.

Lord *Ellenborough* summed up to the jury as follows:

“A candidate at an election for members of parliament is liable to no expence except such as the statute law casts upon him, or he takes upon himself by his express or implied consent. A great number of these items may therefore be entirely laid out of consideration, as arising from

acts which the plaintiff was bound to do by reason of his office, or as of such a nature that no promise to contribute to them can possibly be inferred. To proclaim the election is a duty which the law imposes upon the high-bailiff, and there is the less pretence for charging the candidates with it, as they had not then been nominated. It does not seem necessary that he should have been attended on the occasion with six under-bailiffs, the crier on horse-back, &c. but if it was, he must consider the consequent expence a burthen he took upon himself along with his office, which must be a lucrative one, from the terms on which it was purchased. So the law requires him to do whatever is necessary to making the return; and if the election cannot take place without the attendance of so many staff-men and poll-clerks, he alone must retain and pay them. The charges of the



liable in this instance. If *Percy* had no such authority, then it must be considered whether a promise may be inferred from the defendant's silence upon the subject, and his agents having constantly made use of the hustings. If it is to

high-bailiff's table, however long established; cannot be sustained, and is without any colour of justice. For a share of the expence incurred in administering the oaths to the Roman catholic electors, the defendant appears to be liable, if he shall be considered as having acceded to the character of a candidate. But the statute, while it casts this burthen upon the candidates, regulates the amount of the compensation to be given to the commissioners, and enacts, that the returning officer shall provide commissioners, *at a sum not exceeding one guinea per day, for administering such oaths.* Therefore this item must be reduced to that amount."

(His lordship then addressed himself to the consideration of the defendant's liability for the expence of the hustings, upon which his observations are stated above, and then proceeded), "With the bond of indemnity, I think the defendant can have nothing to do, as there was no occasion to hold the election where there was danger to the church

of *St. Paul, Covent-garden*; but if he acceded to the character of a candidate, then he is liable for his share of the printer's bill, which is stated to be for printing tickets of admission to the hustings, and the forms of certificates required by the act of parliament concerning the administering of the oaths to Roman catholics." Whether the defendant had taken upon himself the character of a candidate, and adopted the acts of his committee, his lordship left as a question of fact with the jury.

Verdict for the plaintiff, with £117. 8s. 2d. damages, being one-fifth of the charges for hustings and special commissioners, and a small portion of the printer's bill.

In the following term, *Clifford* moved for a rule to shew cause why this verdict should not be set aside; contending that a candidate, at an election of members of parliament, cannot be liable for any part of the expences except by positive statute; that an officer, charged with the exe-



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be taken that *Percy* had no authority from the defendant to bespeak the tickets, then he cannot be looked upon as the defendant's agent to warn the plaintiff that no part of the expence of the election would be defrayed by him; the

cution of a writ, cannot legally take any thing for executing it; that even an express promise to a returning officer to pay him part of the expences of the election would be void; that all those things, in respect of which the charge was here made upon the defendant, had been done by the plaintiff in the execution of his duty; that it was for him alone to fix the place of election, at which the candidates and electors were bound to attend; that if he chose to erect booths or hustings for conducting the election with more convenience, he could not throw the expence upon the candidates; and that the act rendering the candidates at county elections liable for the hustings, when erected at their request, shewed there could be no such liability at common law.

The court, however, (after hearing the whole of the chief justice's charge to the jury read from the note of a shorthand writer), were of opinion that his lordship's direction was right; that the items for which the defendant was

charged, had nothing to do with the execution of the writ for the election of members of parliament; that the hustings were to be considered as any other building in the neighbourhood of the place of election, of which the defendant had availed himself; that if his agents had demanded tickets for the hustings, and he had sanctioned their acts, (points left to the jury), he must take a part of the burthen along with the convenience; and that the whole case had been properly put upon the ground of the defendant's adopting the character of a candidate, and thereby assenting to what had been done by his committee.

*Clifford* therefore took nothing by his motion.

The usage in *Westminster* has hitherto been for the high-bailiff to procure an express promise from the candidates, by calling upon them, before their nomination, to sign an agreement in the following form:

“ To *A. B.* esq. high-bailiff of the city and liberty of *Westminster*.



protest was idle, and no notice of the kind supposed was ever given. In that case the circumstance of the defendant's agents having used the hustings seems entitled to some weight; for though a candidate at such an election may remain withoutside the hustings, and require the peace to be kept, yet if he uses the hustings for the accommodation of himself or his agents, he must be presumed to promise to pay a part of the expence of erecting them; he must take the burthen with the benefit."

A case of a similar nature was shortly afterwards tried before *Lawrence, J.* on the *Oxford* circuit, which, though it respected a *county* election, yet, as it did not proceed upon the statute, was decided upon the same principles which governed the decision just mentioned. Same point.

"We, whose names are hereunto subscribed, candidates to serve in parliament at the election for the city and liberty of *Westminster*, do hereby authorize and desire the said high-bailiff, or his deputy, to find and provide sufficient clerks, porters, &c. and also to find and provide a table for the high-bailiff, his deputy, and officers, (the charge of which not to exceed ten guineas *per* day), and to take every necessary step for the conducting and ordering the said election, until two candidates shall be returned by a majority of electors of the said city and liberty; and we do hereby promise and agree to pay to the said high-bailiff, or his deputy, all expences of the said election. Witness our hands," &c.

This case was shortly afterwards followed by the passing of the stat. 51 Geo. 3. c. 126. *App.* lxxxviii.

This case has been inserted so much at length, because it will be frequently necessary to refer to it.



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Gloucester  
Lent ass. 1811.  
2 Campb. N.  
P. Rep. 640.

The action alluded to was brought by Mr. *Wathen*, late sheriff of *Gloucestershire*, against sir *Edward B. Sandys*, and lord *Berkeley*, to recover the expences he had incurred at the election of a member of parliament to represent that county, in May, 1810, when the two defendants were candidates, and lord *Berkeley* was returned (*a*).

(*a*) The plaintiff's demand was composed of the following items:

## SHERIFF'S OFFICE.

|                | £  | s. | d. | £  | s. | d. |
|----------------|----|----|----|----|----|----|
| Advertisements | 3  | 3  | 0  |    |    |    |
| Indentures     | 2  | 2  | 0  |    |    |    |
| Stamps         | 3  | 10 | 0  |    |    |    |
| Under-sheriff  | 21 | 0  | 0  |    |    |    |
| County clerk   | 6  | 6  | 0  |    |    |    |
| Bailiff        | 2  | 2  | 0  |    |    |    |
| Hall-keeper    | 1  | 1  | 0  |    |    |    |
| Filing writ    | 1  | 1  | 0  |    |    |    |
|                |    |    |    | 40 | 5  | 0  |

## ASSESSOR.

|                             |     |    |   |     |    |   |
|-----------------------------|-----|----|---|-----|----|---|
| Mr. ———, retainer and clerk | 6   | 6  | 0 |     |    |   |
| Mr. ———'s fee               | 315 | 0  | 0 |     |    |   |
| His clerk                   | 21  | 0  | 0 |     |    |   |
| Agent's fees                | 15  | 15 | 0 |     |    |   |
| Attendances, letters, &c.   | 10  | 10 | 0 |     |    |   |
|                             |     |    |   | 368 | 11 | 0 |

## BOOTHS.

|                                                                     |     |    |   |     |    |   |
|---------------------------------------------------------------------|-----|----|---|-----|----|---|
| Erecting booths, (sum recovered against the sheriff by the builder) | 825 | 5  | 0 |     |    |   |
| Painting list of hundreds                                           | 1   | 11 | 6 |     |    |   |
| Printing ditto parishes                                             | 1   | 11 | 6 |     |    |   |
|                                                                     |     |    |   |     |    |   |
| Carry forward                                                       | 828 | 8  | 0 | 408 | 16 | 0 |



Sir *E. B. Sandys* pleaded the general issue, and lord *Berkeley* suffered judgment by default.

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A considerable portion of the plaintiff's demand consisted in a charge for erecting booths. It was sworn that lord *Berkeley* and his agents first requested the sheriff to erect hustings, and to take some other preparatory steps; that the sheriff gave directions for so doing; that some days before the election began, sir *E. B. Sandys* concurred in every thing that had been done; and that both candidates promised to contribute to the expence of these preparations. Hustings were accordingly erected, and other expences were incurred (*a*).

|                                                                    | £ | s.  | d. | £ | s.   | d. |   |
|--------------------------------------------------------------------|---|-----|----|---|------|----|---|
| Brought forward                                                    | - | 828 | 8  | 0 | 408  | 16 | 0 |
| Constables guarding booths                                         | - | 4   | 4  | 0 |      |    |   |
| Three surveyors                                                    | - | 21  | 0  | 0 |      |    |   |
| Printing poll-books                                                | - | 11  | 5  | 0 |      |    |   |
| Printing oaths                                                     | - | 1   | 1  | 0 |      |    |   |
| Rent of ground                                                     | - | 30  | 0  | 0 |      |    |   |
|                                                                    |   |     |    |   | 895  | 18 | 0 |
| Fifteen poll-clerks and coach-hire,<br>and expences from town, &c. |   | 173 | 5  | 0 |      |    |   |
| Agent's fees, procuring same                                       | - | 15  | 15 | 0 |      |    |   |
|                                                                    |   |     |    |   | 189  | 0  | 0 |
|                                                                    |   |     |    |   | 1493 | 14 | 0 |

(*a*) A gentleman of the bar was brought down as assessor, and fifteen poll-clerks arrived from *London*. It was proved that the plaintiff had made all the payments mentioned in his demand.



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On the morning fixed for the election, sir *E. B. Sandys* declined, and lord *Berkeley* was returned without opposition.

On the part of sir *E. B. Sandys*, objections were made to the action, 1st, that it could not be maintained jointly against both defendants; 2d, that it could not be maintained in its present form of general *indebitatus assumpsit* (a).

Mr. justice *Lawrence* stated to the jury his opinion thereupon. "Both objections admit of the

(a) These objections were made upon the ground, that, by the stat. 18 Geo. 2. c. 18. § 7, it is provided, that the sheriff shall erect, at the expence of the candidates, such number of convenient booths, for taking the poll, as the candidates, or any of them, shall, three days at least before the commencement of the poll, desire, and shall affix the names of the hundreds, and appoint poll-clerks, &c. but that it could never be the intention of the legislature to make each candidate liable for all expences which should thus be incurred at the election; that upon this construction of the statute, the whole might be levied upon a candidate who had no wish that hustings should be erected at all, and his remedy against the others for a contribution might be difficult and uncertain; that the candidates must be taken to be separately liable for their respective proportions; that, at any rate, this action was misconceived; that there was no liability at common law to reimburse the sheriff for any part of the expence he incurred; that he ought therefore to have declared specially, that he provided booths, poll-clerks, &c. upon the requisition of the candidates, whereby, and by means of the statute in that case made and provided, they became liable to reimburse him for the expence he had thus incurred, and that, being so liable, they promised to reimburse him accordingly.



same answer; that the plaintiff does not proceed upon the statute. If the sheriff had merely been desired to erect booths in pursuance of the statute, then we should have had to have considered what remedy the statute gives him." He then observed, that there was an express undertaking on the part of both candidates to pay for the hustings; upon which he laid down, that the two were jointly liable (a).

(a) Mr. justice *Lawrence*, in this observation, embraced also the charge for the assessor and poll-clerks, but added, "However, although the action is certainly maintainable, there are several parts of the plaintiff's demand with which he has no right to charge the defendants. The first eight items, amounting to £40. 5s. for the indentures, &c. only concern the execution of his office of sheriff, and there is no pretence for throwing them upon the candidates. The same thing may be said of the charge for constables. The sheriff is bound to preserve the peace of the county. If he is put to any extraordinary expence in this way, let him represent the matter when he passes his accounts in the exchequer, or directly to his majesty's government. Any claims he may have for remuneration will thus be attended to; but he has no more right to recover such charges from a candidate at the election than from any other individual in his bailiwick\*." There were several other items that his lordship advised the jury to disallow entirely, such as the *surveyors*, and *printing the poll-books*. For the assessor his lordship thought the defendants liable, although this be an expence not mentioned in the statute, which was meant for the protection of the sheriff, not of the candidates; but the accompanying charges for agents' fees, &c. in retaining the assessor, he considered as exorbitant. Advantage, he observed, was often taken of the situation of candidates to sit in parliament, who were afraid

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\* See stat. 10 and 11 Will. 3. c. 7, *post*, tit. Return, sect. 1.



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With respect to the amount of the demand, he added in a subsequent part of his charge, that the plaintiff could only recover the original expence of erecting the hustings, not the costs of any action brought against him by the person who had erected them.

Under the observations made from the bench, the jury found a verdict for the plaintiff accordingly (a).

An application was made in the ensuing term, by sir *E. B. Sandys*, for a new trial upon other grounds; but the direction of the judge at *nisi prius* was in no respect questioned.

## Coventry.

*Coventry :*

*App. lxxviii.*  
Election  
booth, where  
to be erected.

The stat. 21 Geo. 3. c. 54. § 14, directs the returning officer to cause the booth for holding the election to be erected in the widest and most convenient part of the open market-place, called *Cross-Cheaping*, not contiguous to any other building; but lays down no further regulations thereupon.

to resist any demand, however unreasonable, lest they should render themselves unpopular; and thus a sort of custom was set up for the impositions practised upon them; but such charges as twenty-five guineas for leaving a retainer with a

gentleman at the bar, and paying him his fees, could not be supported in a court of justice, however long established.

(a) The verdict was for £1360.



*Westminster* :—The stat. 51 Geo. 3. c. 126. § 1. (a), after reciting the stat. 18 Geo. 2. c. 18. and that the number of persons entitled, under the last determination of the house of commons, to vote at elections for the city and liberty of *Westminster*, is very considerable, and far exceeding the number of voters in many counties, and that there is no convenient public building within such city wherein to hold the election, and to take a poll in writing of the electors, in the event of the same being legally demanded ; and that controversies had of late arisen as to the payment of the expences attending the building of a convenient booth or hustings, theretofore usually erected for the holding of such election ; among other provisions, directs, that upon every such election (b), the bailiff, or in his absence his sufficient deputy, shall provide, at the expence of the candidate or candidates, a convenient booth or place for holding the election. He is also, by the same clause, to make out a list of the several parishes, districts, or divisions (not exceeding eleven in the whole), into which the same is apportioned or allotted ; and

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*Westminster.*  
*App. lxxxix. xc.*  
 Booth, &c. to  
 be erected at  
 the expence of  
 candidates.

List of pa-  
 rishes, &c. for  
 which divi-  
 sions of booth  
 allotted,

(a) This act was to be in force until the 1st of August 1818. And by the stat. 53 Geo. 3. c. 152. has been further continued until the 1st January 1819. *App. xciii.*

(b) It seems that the returning officer is bound to take the steps enjoined by

this act, whether there be an opposition or not. The erection of booths is not, as in other acts, directed to be upon request of candidates.—Bailiff, &c. offending against the act, may be prosecuted by information or indictment, under § 3.



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whereof candidates, &c. may have copies.

upon request, to deliver a true copy of such list to any of the candidates, or their agents, desiring the same, (being paid for it as therein).

1 M. S. 283.  
Each candidate is only liable for his own proportion of the hustings.

A question arose under this act of parliament in the case of *Morris v. Lord Cochrane*, E. T. 53 Geo. 3. (a), whether there is a liability in each candidate, where there are more than one, for the whole of the expences of the hustings, or whether each is only liable for his own proportion. The Court of King's Bench were of the latter opinion.

(a) Action by the bailiff of *Westminster* against the defendant, one of the candidates at the last election of members to serve for that city in parliament, to recover the expences of the hustings. The defendant let judgment go by default. Upon the execution of the writ of inquiry, the plaintiff contended that he was entitled to recover against the defendant the whole amount of the expences, inasmuch as, by 51 Geo. 3. c. 126, the candidates were made jointly liable; and therefore the defendant, not having pleaded in abatement that the other candidate should have been joined, was liable for the whole. The under-sheriff ruled upon the construction of the act of parliament, that the defendant was only liable for a moiety of the expences,

which the jury accordingly gave. A motion was made to set aside the execution of the writ of inquiry, upon the ground that the under-sheriff had misconstrued the act; for that the act had created a joint liability in the candidates.

Lord *Ellenborough*, C.J.—“There is no pretence for saying that the candidates are to be considered as jointly liable on account of their having a joint interest; for they are, in point of interest, the most adverse parties in the world. Then the question is, whether the words of the act render them jointly liable? I think the act means only that the whole expences are to be defrayed amongst the candidates; and if so, they are liable in their several proportions.”

*Per curiam*. Rule refused.



Another question of considerable importance was tried under the same statute, in the case of *Morris v. Sir Francis Burdett* (a), M. T. 54 Geo.

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2 M. S. 212.  
A candidate brought forward without his consent, and not interfering in the election, is not liable, under 51 Geo. 3. c. 126. to contribute towards the hustings, though he afterwards take his seat in parliament.

(a) Action by the bailiff of *Westminster* to recover from the defendant, as one of the candidates at the last election of members to serve for that city in parliament, a moiety of the expences of the hustings. At the trial before Lord *Ellenborough*, C. J. at the *Middlesex* sittings after last term, it was proved that the plaintiff, some days prior to the last election, made the usual preparation, by the erection of hustings, &c. in expectation of a poll taking place; that, on the day of nomination, Lord *Cochrane* and the defendant were nominated, and afterwards declared duly elected, and returned to parliament; but the defendant never made his appearance on the hustings, nor interfered in any way himself, or by his agents, with the election, nor was there any evidence to shew that he held himself out, or authorized any one else to hold him out, as a candidate. It was proved that the defendant afterwards took his seat in the house of commons, and subscribed the test-roll required by the forms of the house to be signed upon that occasion. Upon this evidence, the defendant's counsel applied for

a nonsuit, on the ground that it was not proved that the defendant was a candidate within the meaning of the 51 Geo. 3. c. 126. under which statute it was sought to charge him with the above expences; and his lordship upon that point was of opinion that the proof was insufficient, inasmuch as to be a candidate, a person must do some act, or be privy to some act done for him, or, at the least, assent to the proposal of himself as an object of the suffrages of the electors; and thereupon he directed a nonsuit: but it being suggested, that the defendant, by having taken his seat in the house of commons, must be presumed to have assented to his being considered as a candidate, within the meaning of the act of parliament, and the case of *Morris v. Burdett*\* being cited in support of that proposition, his lordship, although he inclined against the suggestion, gave leave to the plaintiff to move to set aside the nonsuit, and enter a verdict for £225, the amount of the expences claimed. The case having been argued, the judgment of the court was as follows:

Lord *Ellenborough*, C. J.

\* 1 Campb. N. P. C. 218. ante, 545.



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3. namely, whether a candidate brought forward without any consent on his part, and not inter-

“ I own, upon consideration of this act of parliament, I cannot bring myself to doubt what is the natural sense and meaning of the word candidate, as it is used by the legislature. The legislature has directed that convenient booths shall be erected by the bailiff for holding the election; and there can be no doubt that they assumed, that, upon every occasion of an election, there would be found a candidate, or candidates, in the ordinary sense of that word, that is, persons offering themselves to the suffrages of the electors. That, I take it, is, strictly speaking, the correct sense of the word candidate. Therefore a person cannot be, in that sense of the word, a candidate, by the mere act of others, who propose him without his assent. The legislature, indeed, assumed that it would always be the case of every person who should be proposed, that he would be so far assenting as to answer the description of a candidate; and therefore they thought it sufficient to impose the burthen of recompensing the bailiff on persons answering that description. But a case has arisen not within their contemplation; for here there is not any evidence that the defendant tendered himself

in any way as the object of choice; but he was merely passive, the electors of themselves having brought him forward without any consent on his part. The question then is, whether the legislature intended to throw on such a description of persons, whom we must take to be unwilling candidates, the charge of making this reimbursement? The legislature have not so said; they have said only that the expence shall be defrayed by the candidate, that is, by the person who offers himself. And really there might be infinite hardship in imposing this burthen on any others. Suppose a person, from motives of spleen, or in a jest, should think fit to put forward another as a candidate, shall it be in his power to cast so heavy a burthen on the other, because he may choose to indulge his malice or pleasantry? I do not see any thing in the act of parliament, which makes it susceptible of a construction leading to so mischievous a result, or which affords a reason for extending the word candidate beyond its ordinary import. The stat. 18 G. 2. c. 18. § 7. enacts that the sheriff shall erect such number of booths at the expence of the candidates, as they, or any of



fering in any way in the election himself, or by his agents, but having afterwards taken his seat

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them, shall desire, which is different in that respect from the present act; for here the act imposes the duty on the bailiff in the first instance, and says that it shall be at the expence of the candidates. If there be no candidates, the burthen rests with the bailiff. This may be a hardship; but we cannot, because the legislature have imposed an onerous duty on the bailiff, strain the meaning of the word candidate beyond its fair import, in order to throw the burthen of that duty upon others. As to the inference which is afforded from the defendant's having taken his seat, every person who is returned to parliament is bound by the law of the land to serve; and it has been argued, and seemingly upon probable grounds, that he may be compelled to serve. Several statutes have been cited to that effect, which subject persons to penalties for non-attendance in parliament; and although subsequent statutes may possibly have enabled them to evade the duty, by refusing to take the oaths required, such refusal would be criminal if done, not on account of scruples of conscience, but for the sake of evasion only; and it should seem, that, in every case where a person is

called upon to perform a public duty, he is liable to be punished for refusing to perform it. To instance in one particular only, a serjeant at law is liable to punishment for not taking upon himself that degree, after being called thereto by the king's writ\*. Upon the whole, then, it appears to me that this defendant was not a candidate within the true meaning of that word; having never acted as such, nor in any wise, either directly or indirectly, assented to becoming a candidate. If there had been any evidence of acts, which might have amounted to an adoption of that character, it would have been different."

*Le Blanc, J.* "The question is, in what precise sense the legislature has used the word candidate? and that will depend very much on a consideration of the nature of the charge imposed by the act of parliament. The act imposes a duty on the public officer, of providing a convenient booth or place for holding the election, and it directs that this shall be done at the expence of the candidate. The question then is, whether the act intended to charge with this burthen a person who did not consent to take upon himself the character of a candidate? It has

\* See 2 Inst. 214.



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in the house of commons, was liable for his proportion of the hustings? The court of King's

been argued, that a candidate means a person for whom votes have been given. This argument, pushed to the extreme, would of course comprehend every individual in whose favour one single voter only had given his suffrage, without his knowledge or consent, and would put it in the power of a stranger to subject any person to the expences of the hustings. This to be sure is an extreme case, but still it might be so if the argument be good. It is more probable, however, that when the legislature used the word candidate, it did not occur to them that a case of a person having votes given for him, or one like the present of a person being returned to parliament, without his knowledge or consent, might possibly happen. This latter is also another extreme case; and it is probable that the legislature used the term candidate in its ordinary acceptation, and not with a view to any such extreme cases. We are then to decide whether in such a case the person be liable. I take it for granted, that there was not any evidence of any act done by the defendant to shew that he had adopted the character of a candidate. This has been likened to the case from *Campbell, N. P. C.* where the court refused a rule for setting aside the verdict. The distinction, however, has already been pointed out. There it appeared that *Percy*, who was said to be an agent for some purposes on the behalf of the defendant, had done an act by requiring tickets for the hustings, which act, if done on his behalf, might be considered as an act of adoption by the defendant: therefore it was properly left to the jury to say whether the defendant had not virtually undertaken to defray a part of the expence as candidate; and the jury found that he had. Nothing, however, of that sort exists in this case. There is another question, whether a person who has been returned to parliament without his knowledge and consent, shall be considered as having adopted the character of candidate because he afterwards takes his seat in the commons house. As to that, I cannot but think that it is the duty of every person who happens to be returned, and who is under no disabilities, and can conscientiously take the necessary oaths, to submit to such election, and take his seat, and contribute to the public exigencies by giving his assistance at the grand council of the nation. I will not pretend to say whether a person is or is not compellable to take his seat;



Bench held, that, under such circumstances, he was not liable.

but I cannot consider his obeying a public call as a voluntary act on his part, by which he must be supposed to adopt a burthen imposed; I therefore cannot see any reason for setting aside this nonsuit."

*Bayley, J.* "This may be possibly a hard case on the plaintiff; but, nevertheless, I cannot say on the construction of this act that the defendant falls within the meaning of the word candidate. It very rarely happens that an election takes place in which there is not one or more candidates in the general and popular sense of that word; by which I understand a person who is desirous of obtaining the suffrages of the electors, and holds himself out for that purpose. The act imposes the duty on the bailiff at the expence of the candidate or candidates; therefore if there be any one candidate, the bailiff will be reimbursed his expences; but before he can be so, he must find a person to answer the description of candidate. It has been said that every person in whose favour a poll has been demanded, and is proceeding, or who has been nominated, must be considered as a candidate. I do not agree to that position; for we well know that in many instances

persons have been nominated and had votes given for them without their knowledge and concurrence. It has sometimes happened that some electors, in order to mark a powerful predilection, have thrown away their votes by giving them to some person of high public eminence and character, who has not any concern with the election; and the sheriff is bound to receive these votes. If such a person is to become a candidate by these means, he would also become liable for these expences. And unless the definition of candidate is extended to all persons for whom a vote may be given, I know of no other restriction except that which confines it to such person as shall be desirous of obtaining votes, and shall hold himself out for that purpose, or shall afterwards by his acts adopt the character of a candidate. It is said that here the defendant has adopted this character by afterwards taking his seat in the house of commons. I consider, however, that his taking his seat was in discharge of his public duty; and not a matter of choice, by which he can be said to have adopted the acts of those who elected him. It was his bounden duty to take upon himself this public function."



## Sect. 2.

SECTION 2. *Scotland.*

FROM the comparatively limited number of voters at elections in *Scotland*, it has not been deemed necessary by the legislature to make in respect of such elections, any provisions of the nature of those just mentioned.

*Dampier, J.* “ I cannot consider that the taking his seat was an adoption of the acts previously done so as to make the defendant a candidate within the meaning of this statute. That was only done in discharge of a great public duty; and it matters not whether the defendant was compellable or not to take his seat. It was his duty to take the oaths, if he had no conscientious scruples, and to give in his qualification, if he had one. The question therefore is reduced to the construction of the act. Probably it was the intention of the legislature, when they cast a burthen on the returning officer, that he should be reimbursed in all cases. That might be so; and if upon every occasion of an election there must be a candidate, it would necessarily be so. I apprehend, however, that there is not any necessity that there should be a candidate; and here, according to the ordinary understanding of that word, *viz.* a person offering himself as an object of choice, or acquiescing in the proposal of others, there

was not any evidence of there being a candidate. It might happen, though it is not probable, that an election might take place without any person offering himself, and both members might be returned without their consent; but the question here is whether the term candidate can be extended to every person for whom a vote is given pending the poll. I think not; for that would be opening a door to mischievous consequences. A person in equal circumstances might be nominated and returned, and thereby subjected to very heavy expences. It is true, that if he be returned, he is bound to take the public duty upon himself; and he ought not therefore to be subjected to expence, unless the statute is imperative upon him. It seems to me, however, that there is not any thing in this act nor in the other acts to extend the meaning of the word candidate beyond its ordinary import, which is one who voluntarily proposes himself, or adopts the proposal of others.”

Rule discharged.



Sect. 3.

SECTION 3. *Ireland.*

WITH respect to elections for knights of shires :—By the *Irish* stat. 35 Geo. 3. c. 29. § 5, if the sheriff have reason to apprehend a contest, or if any candidate shall, three days at the least previous to the day appointed for holding the election, by writing under his hand, require it, the sheriff is to cause to be erected, on some convenient place in or near the session-house, or place of election (though such place should happen to be in the county of a town or city), so many booths, or to hire so many buildings, as, together with the county court-house, shall make up so many separate places for taking the poll, as there are baronies or half baronies in the county ; and is to appropriate one to each barony or half-barony, the name whereof he is to cause to be affixed, in large legible characters, on some conspicuous part of the outside thereof ; and the expence of every such booth or building, and of repairing and keeping up the same during the poll, is to be paid jointly by all the candidates to the sheriff. And by the stat. 57 Geo. 3. c. 131. § 4. whenever in any one barony or half-barony of any county the number of freeholders registered within 8 years, and not within 12 calendar months previous to the test of the writ, shall exceed 2000, the sheriff, on receiving written notice from any candidate, is to divide alphabetically, as equally as he can, (but not so as to divide the names beginning with the same letter), all the names of the freeholders so registered in

*App. ccxl.*  
If sheriff apprehend contest, or any candidate, three days previous to day of election, by writing under his hand require it, booths to be erected, making, together with the county court-house, one for each barony or half-barony ;

one to be appropriated for each ; name to be affixed ;

candidates to defray expence.

*App. cccxvi.*  
In barony or half-barony, where freeholders registered within eight years, but not within twelve calendar months previous to test of writ, exceed 2000, sheriff, on notice, &c. to divide names of freeholders, &c.



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so as for not more than 2000 to poll in any booth, and to erect as many as necessary at the expence of candidates.

*App.* ccccxvii.

*Post.* 618.

Sheriff to erect a booth, or hire a building, wherein he is to decide cases referred to him, and where he is constantly to attend during poll.

*App.* cccxxiv.  
cccxxvi.

Sheriff apprehending contest, or being requested, &c. in addition to the usual number of booths, &c. to provide one for the town of Londonderry, &c. and one for the town of Coleraine, &c.

such barony or half-barony, so that it shall not be necessary for more than 2000 to poll in any booth; and he is to erect as many more booths as may be necessary; the expence whereof is to be paid him by all the candidates jointly.—The same act, by § 5, in order that references to the sheriff may not interrupt the poll, authorizes and requires him to erect a booth, or hire a building, exclusive of the others, wherein he is to decide cases referred to him. And he is to give his constant attendance therein during the poll.

With respect to elections for knights of the shire for the county of *Londonderry*:—The *Irish* stat. 40 Geo. 3. c. 80, after reciting, by § 1, doubts as to whether certain places were within the county for the purposes therein, and providing for them (*a*); by § 2, directs the sheriffs, upon the apprehension of a contest, or upon request by a candidate as under the act last above mentioned, to cause two separate booths to be erected, or two separate buildings to be hired, one for the city of *Londonderry*, and one for the town of *Coleraine*, respectively, and for the parts of the liberties of each therein above mentioned exclusive of the several other booths or buildings otherwise required.

With respect to other elections:

(*a*) *Viz.* the city of *Londonderry*, and that part of the liberties of the city of *Londonderry*, situate and lying on the north-west side of the river *Foyle*; and that part of

the liberties of the town of *Coleraine*, situate and lying on the north-east side of the river *Bann*. See § 1. of the act. *App.* cccxxv.



The *Irish* stat. 35 Geo. 3. c. 29. § 6, has made a provision which operates only where the number of electors polled on the last, or any former election, shall have exceeded two hundred; in which case, upon demand made in like manner, and within the same time, as in the case of knights of the shire, by any candidate, the returning officer or officers, is or are to cause to be erected, in or near the place of election, as many booths, or hire as many buildings, for taking the poll, as such candidate shall so desire, not exceeding, together with the place appointed for holding the election, the rate of one place for every hundred voters, polled at the last, or any former election; the expence to be paid in like manner jointly by all the candidates.

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*App. ccxli.*  
Where number of electors at any former election have exceeded 200, upon demand by a candidate in writing, &c. booths to be erected, &c. not exceeding one for each 100 voters,

at the expence of candidates.



## CHAPTER X.

OF PROCEEDING TO ELECTION, AND OF THE STEPS  
TO BE TAKEN ON DEMAND OF A POLL.

SECTION 1. *Of commencing the election; wherein of the acts to be read thereat; and of concluding the proceedings where no contest.*

SECTION 2. *Of the choice by the view or by the poll; and of the refusal of a poll when legally demanded.*

SECTION 3. *By whom, and when, a poll must be demanded.*

SECTION 4. *Of appointing sub-sheriffs, poll clerks, inspectors, and cheque clerks; and herein of the duty of each.*

SECTION 5. *Of appointing commissioners to administer oaths to electors; what oaths they are to administer; whereupon, and in what manner, they may administer oaths; how they are to certify; and of providing places wherein for them to act.*

SECTION 6. *Scotland.*

SECTION 7. *Ireland.*

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1. **O**F commencing the election; and herein of the acts to be read thereat.



With respect to elections for knights of shires:

Sect. 1.

County elections.

On the day, and at the special county court, previously proclaimed, the sheriff is to proceed to election, which, by the stat. 23 Hen. 6. c. 14.

Sheriff to proceed to election between the hours of 8 and 11.

§ 2 (a), he is to do in his full county, between the hours of eight and eleven in the forenoon, under the penalties of £100 to the king and £100 to the informer.

Penalty.

The court is usually opened by a proclamation for persons having any thing to do at such court, to give their attendance. The writ is thereupon read.

Proceedings at the court.

Writ to be read.

The sheriff next takes and subscribes the oath appointed for him by the stat. 2 Geo. 2. c. 24, which is administered to him in manner before stated, and is to be entered among the records of the sessions (b).

Sheriff to be sworn.  
(Ante, 465.)  
App. xv.

The sheriff is then, in conformity to the stat. 2 Geo. 2. c. 24. § 9, to read, or cause to be read, openly before the electors, that act, and every clause therein.

2 Geo. 2. c. 24.  
to be read.  
App. xiii.

(a) For this statute, see ante, 399, 400.

sons administering the oath to sign the *jurat*.

(b) It is proper for the per-



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It seems election not void by reason of omission to read the stat. 2 Geo. 2. c. 24.

It seems that a neglect to read the bribery act will not render the election void (*a*), that statute being only directory; but a returning officer would be guilty of a great omission, if this requisition of the law were not complied with.

Candidates proposed.

These preliminaries having been observed, the candidates are then proposed (*b*), and the electors proceed to their choice.

Electors not restricted to vote for candidates at first proposed.

(*Ante*, 36.)

It should be remembered, that, in making this choice, they are not restricted to the election of either of the persons at first nominated, but, as has been already stated, candidates may be put forward at any time during the proceedings.

Nor for candidates proposed, according to a particular usage, at the place. (*Post*, 568.)

Nor, it should seem, is there any restriction upon them to vote for persons who have been formally nominated. At all events, as will be seen by the case of *Exeter*, about to be mentioned, no custom in a particular place can operate, to restrict their choice to persons nominated in a way peculiar to such place.

(*a*) See the case of *North Berwick*, &c. *post*, . . . them in parliament? where upon each candidate is proposed by one elector, and seconded by another.

(*b*) The usual way is for the sheriff to ask the electors, Whom they please to serve



With respect to other elections :

The stat. 23 Hen. 6. c. 14, not applying to such elections, there is no particular hour in the day, whereupon the proceedings should commence. The returning officer holds the election at the appointed place and time; the writ or precept is read (which, according to lord *Coke*, is a necessary step); also the stat. 2 Geo. 2. c. 24; and likewise, at all places where the right of election is in the whole, or in part in freemen, the stat. 3 Geo. 3. c. 15, is also to be read, in conformity to § 7. of that act, immediately after reading that of the 2 Geo. 2. c. 24. This being observed where the law requires it, the proceedings are similar to those at elections of knights of shires (*a*).

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Other elections.

No particular hour for commencement.

Writ or precept to be read.

4 Inst. 49.

(*Ante*, 401, 402.)

also the 2 Geo. 2. c. 24.

and where right of election wholly or in part in freemen, the

3 Geo. 3. c. 15. App. xxii.

At the following places, however, particular acts of parliament are also to be publicly read at elections, immediately after those which are directed by any act of parliament to be read, and before proceeding to election.

Acts to be read at particular places.

*New Shoreham :*

At New Shoreham.

The stat. 11 Geo. 3. c. 55, in conformity to § 6. of the act.

App. lxxii.

11 Geo. 3. c. 55.

(*a*) For the case of *Nottingham*, where the returning officer opened a poll where

there was no contest, see *post*, 569.



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*Cricklade :*

At Cricklade.

App. lxxxiv.  
22 Geo. 3. c. 31.

The statute 22 Geo. 3. c. 31, in conformity to § 6. of the act.

At Aylesbury

*Aylesbury :*App. lxxxviii.  
44 Geo. 3. c. 60.

The statute 44 Geo. 3. c. 60, in conformity to § 5. of the act.

After which (these particularities being observed where the law requires it), the candidates are nominated, and the same general order of proceeding takes place as at elections for knights of the shire.

1 Journ. 875.  
An usage for member to be chosen from among persons previously nominated by mayor and council, not binding.

In the case of *Exeter*, 26th March, 1627, Mr. *Jordan* was returned by one of the indentures, in a case of a double return. It appeared that, by prescription, the mayor and common council nominated four, out of which the burgesses chose two. But Mr. *Jordan* had not been so nominated. His election was holden good notwithstanding.

## 2. Of elections where there is no contest:

If no more candidates than the num-

If there be no greater number of candidates than what the exigency of the writ or precept



requires to be chosen, those who are named should be declared (a) to be duly elected; and returned forthwith. Nor in such case will any delay in closing the proceedings be tolerated by the house of commons, as is evident from the resolutions in the case before mentioned of *(Ante, 326.) Nottingham, 1803.*

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ber required to be chosen, those named to be returned forthwith.

In that case, one of the complaints in the petition of Mr. *Coke* was, that sir *John Borlase Warren* and himself being the only candidates, nominated in the presence of the electors assembled; and no poll being demanded, nor any other candidate proposed for near an hour after the different forms had been gone through, preparatory to the election, they being duly elected, it was the duty of the officer who presided to have returned them; but that, in violation of such duty, and for the express purpose of giving time to procure a third candidate, he, of his own authority, and by his own act, unnecessarily, vexatiously, and illegally, opened a poll, and frequently and repeatedly urged the electors to name other candidates, declaring that if they

Returning officer delaying so to do, and opening a poll, there being no contest, censured.

(a) This is usually thus declared by the sheriff: "Freeholders of the county of \_\_\_\_\_, you have been called upon to propose two fit and discreet knights to serve you in parliament, and you have chosen *A. B.* and *C. D.* I do therefore declare them duly elected."



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did not propose some other candidate he must close the poll; and that although no other candidate appeared, and although he was repeatedly called upon by the voters in the interest of sir *John Borlase Warren* and the petitioner, to declare them to be duly elected, he neglected so to do; and that after a considerable time had elapsed, during which the electors had polled for no other persons, it was intimated that Mr. *Birch* would come forward as a candidate; that three voters only having polled for Mr. *Birch*, and forty-four for the petitioner, and sir *John Borlase Warren*, the sheriff adjourned the poll to the subsequent day, no demand having been made on the part of Mr. *Birch*, or of any elector, for a continuance of the poll.

These allegations were substantiated by the evidence, with the additional circumstance, that after the nomination, a few votes being given for the two candidates (as is the custom of *Nottingham*, though there be no opposition), some persons having suggested to the sheriff, that it was time to close the poll, and make the return, Mr. *Coke* desired that a few more might be allowed to give their voices. This request was much insisted upon by the counsel for the sitting member, as at least an acquiescence on



the part of the petitioner, to the continuance of the poll.

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The committee, however, came to the following resolution upon this part of the case: "That it appears to the committee, that *John Allen*, being returning officer, &c. acted contrary to his duty, in opening a poll, and proceeding to take the votes of electors for the period of about half an hour, and until forty electors had polled, there being during the whole of that time no third candidate."

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SECTION 2. *Of the choice by the view or by the poll, and of the refusal of a poll when legally demanded.*

IF the number of candidates proposed at any election, be more than the writ or precept requires to be returned, it becomes necessary to ascertain in whose favour the majority is. It appears from *Whitelocke*, that formerly elections were sometimes made by a kind of ballot, or by lot (a). He adds, "but in general the

<sup>1</sup> Whitel. 391

(a) "Sometime a way of kind of scrutiny, in writing election hath bin used by a the names of the persons



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election is made, either by the view, or the poll."

Whitel. 393.

The election is made by the view, when the inclination of the electors is taken by the voices, by holding up of hands, or sometimes by collecting the friends of the respective candidates into separate bodies. And if no poll be demanded, an election so determined will be sufficient.

8 Journ. 107.  
If no poll demanded, an election determined upon the view, sufficient.

*Devizes*, 31st July, 1660. No poll was demanded at the election. The mayor declared, upon the view, for Mr. *Aldworth*, who was returned. Some testimony was offered that Mr. *Norden*, the petitioner, had the majority; yet it did not appear whether it consisted of legal voters. Mr. *Aldworth* was holden duly elected.

The election is made by the poll, when the voices are taken, or votes numbered man by man; and if a poll be legally demanded, the returning officer is bound to grant it (a).

whom they would have to be chosen, in several papers, and none to know who wrote the paper; but they who were written most often, carried the election." 1 Whitel. 391.

(a) *Yorkshire*, 4th July, 1625. "Sir *Edw. Coke* liketh not the sheriff's answer that he needed not grant the poll: for bound to grant it." 1 Journ. 802.



Lord *Coke* says, “For the election of the knights, if the party of the freeholders demand the poll, the sheriff cannot deny the scrutiny, for he cannot discern who be freeholders by the view; and though the party would wave the poll, yet the sheriff must proceed in the scrutiny.” And *Whitelocke* lays down the law to the same effect (a). [Sect. 2.  
4 Inst. 48.  
1 Whitel. 387.]

Accordingly, it has been repeatedly holden, that the refusal of a poll, when duly demanded, will avoid the election. Nor has this doctrine been confined to elections for knights of the shire; it has been equally acted upon with respect to all elections.

*Southwark*, 2d March, 1623. Mr. *Yarwood* was chosen in the first place; and touching the election of the other burgess, *Mingaie* and *Bromfield* were propounded. And the electors, according to their ancient usage, declaring for whom they were, by holding up of hands, at the first trial it seemed Mr. *Mingaie* had the more hands with him; but upon a second and fur- 1 Journ. 724.  
Glanv. 7.

(a) “If any party in competition, or the freeholders electors do upon the election demaund the polle, the sheriffe cannot deny it, and though the demaunders of it doe after-wards waive it, yet the sheriffe must proceed in the scrutiny: so tender of the freedom and indifferency of elections is the law of parlements.”



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ther trial, it seemed very clear that Mr. *Bromfield* had the more hands for him. But there were divers watermen and others present, who ought to have no voice in the election; and albeit a motion was made in due time to try by numbering the polls of the electors, who had the more voices, yet that course was not taken, but the assembly of the electors dissolved, without numbering the polls. Mr. *Mingaie* and Mr. *Bromfield* were each returned upon separate indentures, with Mr. *Yarwood* (a).

Glanv. 10.

It was reported by the committee, and resolved by the house, "that neither *Mingaie* nor *Bromfield* were duly chosen; for that there being a contrariety of opinions amongst the electors, and the poll duly demanded for clearing of the doubt, the truth was not tried out by the poll, which is the only certain means rightly to decide the difference in case of opposition, especially where others are present besides the electors, who, in holding up their hands, or sounding of voices, or separation of companies, or the like, amongst a multitude, cannot be distinguished from the electors; and so the proceedings of the electors in this case, concerning the second

(a) It appears from the method formerly was to choose above, as well as from other first one member, then the cases in *Glanville*, that the other.



burgess's place being very imperfect, and void in law, a warrant ought to be made (which was made accordingly) by Mr. Speaker, for a new writ to go forth for the choice of another burgess for the said borough."

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To the same effect are the cases of *Cambridgeshire*, 16th March, 1623 (a). In that of *Newcastle-under-Line*, 9th April, 1624, as between sir *Edward Vere* and Mr. *Keeling*,

Glanv. 80.  
1 Journ. 737.1 Journ. 759.  
Glanv. 77.

(a) The friends of sir *Edward Peyton* and sir *Simon Steward*, and those of Mr. *Cutts* and Mr. *Palavicini*, the candidates, collected into separate troops; it was doubtful upon the view which had the greater number, and the under-sheriff promised that he would swear the freeholders, according to the statute, and so try out the right by the poll; but being engaged, as it should seem, for sir *Edward Peyton*, he departed, declaring who were elected, and went to the lodging of sir *Edward Peyton*, in company of divers of the freeholders which stood for sir *Edward Peyton*; and afterwards, without ever returning back to the place where the election was to be accomplished, caused the said sir *Edward Peyton* and sir *Simon Steward* to be returned.

"And in this case it was conceived by the committee,

and so reported to the house, and there resolved, that no election at all was had, or made, of any one knight of the shire for the said county; but that all was void, by reason that the view being uncertain, and divers mingled amongst the freeholders who ought not to have voices, nor could be distinguished from the freeholders by the view, the poll was justly, and in due time, demanded; and the denying thereof, or not accomplishing thereof, in such case of doubt, where neither side yieldeth to the other, turneth all into a nullity. And therefore it was further ordered by the said house, that the said return made of the said sir *Edward Peyton* and sir *Simon Steward* should be quashed, and that a warrant should be made by Mr. Speaker for a new writ to go forth."



## Sect. 2.

4 Journ. 346.

8 Journ. 69.  
(See also *Cirencester*, Glanv.  
104, *post*, 578.)  
8 Journ. 276.9 Journ. 110,  
111.

upon a dispute concerning the right of election, the poll being requisite to discern the truth, who had the voices of most electors, was called for, but not pursued, by occasion of such difference; whereupon sir *Edward Vere* was returned; but his election was holden void. *Reading*, 17th November, 1645 (a); *Preston*, 20th June, 1660 (b). It was also one of the grounds whereupon the election for *Chippenham*, 20th June, 1661, was avoided (c); and that of *Eversham*, 22d November, 1669. Upon the report of the committee, the matter was debated, whether the denial of the poll avoided the election; and it was resolved that it did.

(a) Upon the report from the committee, &c.

“Resolved,

“That the election of Mr. *Tanfield Vachell* is void, because the poll was not granted, being duly demanded.”

(b) Mr. *Turner* reported from the committee the case upon the double return for the borough of *Preston*, in the county of *Lancaster*; that upon examination of the fact, it appeared to the committee, that, at the time of the election, the taking of the poll was denied by the mayor; and that, in respect thereof, the committee are of opinion the

election is void. And it was so resolved by the house.

(c) Serjeant *Charlton* reported from the committee, touching the several returns of sir *Edward Hungerford*, Mr. *Bainton*, and sir *Hugh Speake*, that no due notice was given for the election, and that so many of the electors were absent, as might have overbalanced the poll had they been there; and that the poll being demanded for all three, was refused as against Mr. *Bainton*, and the opinion of the committee of the wilful miscarriage of the bailiff therein as by design; and that the election was void. And the house agreed.



Moreover, in the two latter cases, the officers were respectively sent for in custody (a).

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The conclusion drawn from these cases is further confirmed by the language of the statutes 7 and 8 Will. 3. c. 25. § 3 (b), and 25 Geo. 3. c. 84. § 1 (c), both of which, particularly the latter, treats the proceeding to a poll as the necessary consequence of its being demanded.

SECTION 3. *By whom, and when, a poll must be demanded.*

A POLL must be demanded by a candidate, or by an elector; but it seems from the case of *Leominster*, 22d March, 1662, already mentioned, that if a demand of a poll be made by a candidate, who shall turn out to be ineligible, the refusal to him will not avoid the election.

Poll to be demanded by candidate or by an elector. 8 Journ. 392. (*Ante*, 120.) But if candidate ineligible, refusal of a poll to him will not avoid election.

(a) This was also one of the grounds upon which the sheriff of the county of the city of *Litchfield* had each sent for in custody, 27th June, 1660. 8 Journ. 76. See also *Warwickshire*, 9th November, and 2d December, 1640, cit. Heyw. Co. El. 361. 2 Journ. 23. 43.

(b) See *ante*, 518, (h.)

(c) See chap. 11. sect. 1.



## Sect. 3.

Poll should be demanded within reasonable time.

It must also be demanded in due time, that is, before the majority is declared upon the view, or within a reasonable time afterwards.

1 Journ. 468. 485.

3 Journ. 280.

In the case of *Cambridgeshire*, 19th April, and 14th May, 1614, it seems there had been a lapse of two hours; and in that of *Southwark*, 26th June, 1661, judgment had been given upon the view an hour and a half before the poll was demanded. The demand of the poll was in each deemed to be too late (*a*).

A poll must not be demanded in a partial or qualified manner; it must be demanded generally, as to all the electors.

Glanv. 104.

107. 110.

Poll demanded of one description of electors

*Cirencester*, 21st May, 1624. The right of election was determined to be in the inhabitants, householders, residents within the borough.

(*a*) The language of Mr. *Glanville*, 4th July, 1625, in the case of *Yorkshire* (speaking of a county election), assumes that a poll must not only be demanded, but granted, before eleven o'clock, the time for election otherwise being passed, alluding to the statutable hours under the 23 Hen. 6. c. 14. 1 Journ. 802. Mr. serjeant *Heywood*, Co. El. 369, observes here- upon, that this strictness is not now insisted upon; and that, as the sheriff may declare the majority after the statutable hours are elapsed, so any freeholder or candidate may demand a poll at any time, whether within the prescribed hours or not, before the sheriff has declared that majority, or within a reasonable time afterwards.



A poll was demanded of the freeholders only; this was considered to be a void demand of the poll. But it was declared, that if it had been demanded of the inhabitants, householders, residents, then if the same had not been granted and taken accordingly, the election had been void.

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only, a void demand, and need not be complied with.

SECTION 4. *Of appointing sub-sheriffs, poll clerks, inspectors, and cheque clerks; and herein of the duty of each.*

A POLL having been duly demanded and granted, the law requires that certain preparations should be made, in order to the carrying on the same with regularity and effect. Those preparatory steps which were mentioned in the preceding chapter, are in some degree discretionary; but as it is impossible that the returning officer can himself, without the aid of others, take the poll; and perform the duties required at an election, where the electors are very numerous, the law permits the appointment of a certain number of persons, to assist him in so doing.



## Sect. 4.

1. As to appointing sub-sheriffs, or deputies to returning officers :

Usual to appoint sub-sheriffs.

At elections for knights of shires:—The sheriff, or under-sheriff, may appoint persons to act on their behalf at the different places where the poll is carrying on (*a*). Such appointment, however, not being made under the positive provision of any statute, there are no particular regulations respecting it.

It may be observed, however, that although there is no act which expressly authorizes such a measure, it is nevertheless distinctly recognized, both in the statute 7 and 8 Will. 3. c. 25. § 3 (*b*), the 18 Geo. 2. c. 18. § 7 and 9 (*c*), and of 19 Geo. 2. c. 28 (*d*).

It should seem that the sheriff will be civilly answerable for the conduct of such persons appointed to act on his part; but that he cannot be made criminally answerable for any step which

(*a*) *Caermarthenshire*, 1803. The appointment of sub-sheriffs, or deputy-sheriffs, as they were termed, was made a subject of complaint by the petitioner, as being illegal and unknown to the law. There being, however, no allegation to this effect in the petition,

the committee decided, that the question could not be gone into. 1 Peck. 289.

See sect. 7. Such appointments are enjoined by act of parliament in *Ireland*.

(*b*) See *ante*, 518.

(*c*) See *ante*, 543.

(*d*) See *post*, 589.



they shall take, unless it be brought home to him by agency.

Sect. 4.

In the *Middlesex* case, 1804, it was proposed, 2 Peck. 33. on the part of the petitioners, to give evidence of the declarations made by the under-sheriff at the hustings, while voters (who were wrongfully admitted to poll) were tendering their votes, and taking the freeholders oath, in order to support the charge of partiality against the sheriff, the sheriff not being present at such declarations, nor any proof given of the agency of the under-sheriff. The evidence was rejected.

With respect to other elections:—There is not in general the same necessity for a deputy to the returning officer, as at elections for knights of shires; but it should seem that there can be no legal objection to a returning officer having such assistant, the responsibility (except where the constitution of the place permits a deputy to act independently of his principal) always resting with the principal.

2. As to appointing poll clerks:

With respect to elections for knights of shires:—By the statute 7 and 8 Will. 3. c. 25.



## Sect. 4.

On demand of  
poll,

poll clerks to  
be appointed.

§ 3 (*a*), when a poll is required, the sheriff, his under-sheriff, or such as he shall depute, is, for the more due and orderly proceeding therein, in their discretion, to appoint a sufficient number of clerks for taking the poll; and such clerks are to take the poll in the presence of such sheriff, his under-sheriff, or deputy (*b*).

(*Ante*, 543.)  
One or more  
such clerks to  
be appointed  
for each booth.

The statute 18 Geo. 2. c. 18, by § 7 (*c*), after directing the erection of booths or polling places, not exceeding a certain number, upon request, as before stated, commands the sheriff, under-sheriff, or such person as he shall depute, to appoint a proper clerk or clerks at each, to take the poll (*d*).

(*a*) For this clause, see *ante*, 518.

(*b*) Under the terms of the above statute, authorizing the appointment of poll-clerks, it seems the sheriff, in the execution of that part of his duty which regards the taking the poll, need not attend in person. It should be observed, at the same time, that if he rely upon those who act under him, instead of himself attending, he will, nevertheless, be equally responsible in making the return.

(*c*) For this clause, see *ante*, 543.

(*d*) See an allegation of

misconduct in the returning officer, in reducing the number of poll-clerks on the last day of the election, to the prejudice of one of the candidates, in the case of *London*. 2 Peck. 268. It did not appear, however, by the evidence, that he had sustained any prejudice thereby. Could a case be shewn in which the interest of a candidate were affected by any such contrivance, which would be advantageous to the candidate having the majority of the poll at the time of such alteration, it might form a very grave charge.



The poll clerks thus appointed, are to be sworn by the sheriff, or under-sheriff, according to the stat. 7 and 8 Will. 3. c. 25. § 3 (a). Sect. 4.  
Poll clerks to be sworn.

By the stat. 18 Geo. 2. c. 18. § 7 (b), these clerks are to be at the expence of the candidates, and to be paid not exceeding one guinea a day each clerk. How to be paid.

The duty of poll clerks is to set down, 1st, the name of each freeholder; 2d, the place of his abode; 3d, the nature of his freehold, in whose occupation, and where situated; 4th, if the vote consists in rent, the names of the owners or possessors of the lands or tenements out of which such rent issues, or some or one of them, and where such lands or tenements are situated; 5th, the candidates for whom he shall poll; 6th, to enter *jurat* or *affirmat*, against the name of every voter who shall be tendered and take the freeholders' oath (c); 7th, if no commissioners for administering oaths be appointed, he may also swear the freeholders. Duty of poll clerks.  
See stat. 7 & 8 W. 3. c. 25. § 3.  
10 Ann. c. 23. § 5. 8. App.  
18 Geo. 2. c. 18. § 1. App.

(a) The act (*ante*, 519) only gives the substance of an oath, not a form. See a form which may be administered, *App.* xxii.

(b) For this clause, see *ante*, 543.

(c) If the oaths are administered by commissioners, this entry will be made upon production of certificate from them.



## Sect. 4.

At other elections, appointment of poll clerks not directed,

but recognized.

With respect to other elections:—There are no general statutory provisions for the appointment of poll clerks (with the exception of those for *London* and *Westminster*) ; but the stat. 19 Geo. 2. c. 28. § 6 (a), allowing a cheque book for every poll book at places being counties, and that of the 25 Geo. 3. c. 84. § 7 (b), directing that persons so employed at any elections shall be sworn, and that statute not confining such requisition to elections of knights of the shire, the law evidently contemplates their being employed at all elections indiscriminately.

All poll clerks to be sworn.

The clause of the latter act, just alluded to, recites, that it is expedient that all persons employed as poll clerks should take an oath for the faithful discharge of their office, but that

(a) For this clause, see post, 589.

(b) The stat. 25 Geo. 3. c. 84. “ *An act to limit the duration of polls and scrutinies, and for making other regulations touching the election of members to serve in parliament for places within England and Wales, and for Berwick-upon-Tweed ; and also for removing difficulties which may arise for want of returns being made of members to serve in parliament.* ”

§ 7. “ And whereas it is ex-

pedient that all persons employed as poll-clerks at elections, should take an oath for the faithful discharge of their office, but the same is not at present required or authorized by law, except in counties and other places for which there are express provisions made by statute ;”  
Be it therefore further enacted, that, from and after the said first day of August, one thousand seven hundred and eighty-five, at every election of any member or members of parliament for any city,



the same is not required except in counties, and places where there are express provisions by statute, and enacts, that at all elections of members of parliament for any county or place in *England, Wales, or Berwick-upon-Tweed*, every person retained by the returning officer, to act in taking the poll, shall, before beginning to take such poll, be sworn by the returning officer according to that act; and this act in so doing sufficiently points out what the law requires them to perform (a).

An omission or refusal to swear the poll clerks, by the returning officer, as directed by the above act, although highly reprehensible in such returning officer, will not avoid the election.

“borough, or other place,  
“within *England or Wales*,  
“or town of *Berwick-upon-Tweed*, every person whom  
“the returning officer or officers shall retain to act as a  
“clerk in taking the poll,  
“shall, before beginning to  
“take such poll, be sworn by  
“such returning officer or  
“officers truly and indifferently to take the said poll, and  
“to set down the name of  
“each voter, and his addition, profession, or trade,  
“and the place of his abode,  
“and for whom he shall poll;

“and to poll no person who  
“is not sworn or put to his  
“affirmation, where by this,  
“or any other statute, any  
“oath or affirmation now is,  
“or hereafter shall be required, which oath of every  
“such poll-clerk the said returning officer or officers is,  
“or are, hereby authorized  
“and required to administer.”

(a) The act gives only the substance of an oath, not a form. For a form which may be administered, see *App. xxiii.*



## Sect. 4.

1 Peck. 506,  
507.

Refusal to  
swear poll  
clerks illegal  
in returning  
officer, but  
will not avoid  
election.

*Colchester*, 1789. The mayor refused to swear the poll clerks. Evidence was offered on the part of Mr. *Tierney* and Mr. *Jackson*, the petitioners, to shew this amongst other irregularities at the election. But the committee directed the chairman to inform the counsel that they had deliberated on the different matters of the petition, and the evidence that had appeared before them; that they did not consider the omission of any form prescribed by a directory act of the 25th of his present majesty, as sufficient to make the election void. They, however, came to the following amongst other resolutions, viz.

“That the poll clerks, at the late election for a Burgess to serve in parliament for the borough of *Colchester*, were not sworn; and that such omission was contrary to law.”

London.

App. lvii.

Poll clerks to  
be appointed.

At elections for *London*, it had been provided as far back as the stat. 11 Geo. 1. c. 18, that the presiding officer, in case of a poll demanded by any candidate, or any two or more electors, should appoint a convenient number of clerks to take the same in the presence of him, such presiding officer; such clerks being first sworn according to § 1. of that statute (*a*).

Their duty and  
oath.

(See ante, 584,  
585, n.)

(*a*) The substance of the given in the 25 Geo. 3. c. 84.  
oath is nearly similar to that § 7, which it should seem, by



At elections for *Westminster*, by the stat. 51 Geo. 3. c. 126. § 1, the bailiff, or, in his absence, his deputy, in the case of a poll demanded, is in like manner to appoint a convenient number of clerks, not exceeding twenty-six, to take the poll, such clerks being at the expence of the candidates, and to be paid not exceeding one guinea a day each clerk.

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Westminster.

A p. xc.

Upon poll demanded, poll clerks to be appointed, not exceeding 26.

Poll clerks, how to be paid.

3. Of appointing inspectors of the poll, and cheque clerks; and of their duty respectively:

With respect to elections for knights of shires:—In order to ensure the accuracy of the poll, and for the satisfaction and security of the interests of candidates, the law allows that each candidate should have one inspector; and also that he should have one cheque book (*a*) kept for every poll book.

County elections.

This depends upon the stat. 7 and 8 Will. 3. c. 25, and the stat. 18 Geo. 2. c. 18. § 9, respectively.

§ 9 of that act, would not extend to *London*.

See a recognition of such appointment at elections for *Norwich*, by the stat. 3 Geo. 2. c. 8. App. lxvii.

(*a*) In the event of the loss or destruction of the poll book, the cheque books would be resorted to. *Middlesex*, 8th December, 1768. 32 Journ. 95.



## Sect. 4.

Each candi-  
date to have  
one inspector.

His duty.

The former of these statutes, by § 3 (*a*), directs that the sheriff, or in his absence his under-sheriff, shall appoint for each candidate one person, to be nominated by such candidate, to be inspectors of the clerks appointed to take the poll. Their duty is to observe that the poll book is accurately kept.

A cheque book  
to be allowed  
for every  
poll book,  
for each can-  
didate.

Their duty.

The latter statute, by § 9 (*b*), directs the sheriff, or in his absence the under-sheriff, or such as he shall depute, to allow a cheque book for every poll book, for each candidate, to be kept by the respective inspectors at every place where the poll for such election shall be taken or carried on. These books are kept by clerks appointed by the respective candidates to check the votes as they are received or tendered at the poll.

At elections  
for places be-  
ing counties,

With respect to places being counties:—The

(*a*) For this clause, see *ante*, 518, 519.

(*b*) The stat. 18 Geo. 2. c. 18. (*For the title of this act, and § 10, see ante, 532.*)

§ 9. “ And be it further en-  
“ acted, by the authority afore-  
“ said, that the sheriff, or in his  
“ absence the under-sheriff, or

“ such as he shall depute,  
“ shall at every such election\* ”

“ allow a cheque book for  
“ every poll book for each  
“ candidate, to be kept by the  
“ respective inspectors at every  
“ place where the poll for  
“ such election shall be taken  
“ or carried on.”

---

\* *i. e.* Election for knights of the shire in *England and Wales*.



stat. 19 Geo. 2. c. 28. § 6 (a), directs that the sheriff or sheriffs, their under-sheriff or under-sheriffs, or deputy, shall allow a cheque book for every poll book, for each candidate, to be kept by their respective inspectors, at the place of polling.

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the like provision.

With respect to other elections :—Except that of *Westminster* (b), there is no authorized cheque upon the poll book.

*Westminster :*

*Westminster.*

By the stat. 51 Geo. 3. c. 126. § 2, the bailiff, or in his absence his deputy, is to allow a cheque book for every poll book, for each candidate, to be kept by their respective inspectors, at the place of polling.

App. xci.  
Each candidate to have a cheque book for every poll book.

(a) The stat. 19 Geo. 2. c. 28. (*For the title of this act, and § 7, see ante, 537.*)

§ 6. “ And be it further enacted, by the authority aforesaid, that the sheriff or sheriffs of any city or town, being a county of itself, in that part of *Great Britain* called *England*, or in his or their absence his or their under-sheriff or under-sheriffs, or such other person as he or they shall depute,

“ shall, at every election of  
“ any member or members to  
“ serve in parliament for such  
“ city or town, allow a cheque  
“ book for every poll book for  
“ each candidate, to be kept  
“ by their respective inspectors,  
“ at the place where the  
“ poll for such election shall  
“ be taken or carried on.”

(b) See a recognition of such appointment at elections for *Norwich*, by the stat. 3 Geo. 2. c. 18. App. lxvii.



## Sect. 5.

SECTION 5. *Of appointing commissioners to administer oaths to electors; what oaths they are to administer; whereupon, and in what manner, they may administer oaths; how they are to certify; and of providing places wherein for them to act.*

1. WITH respect to appointing commissioners to administer oaths to electors:

At all elections, upon the demand of a poll, it is in the discretion of candidates (or rather of any candidate), in order to facilitate the proceedings at the poll, to make application to the returning officer for the appointment of commissioners to administer oaths to electors, which application it is imperative upon such officer to comply with.

The oaths which may be required to be taken by electors, were, in some instances, to be administered by the returning officers, and in others, by their deputies or clerks; but either of such persons being much employed in taking the poll, it was found that great delays were occasioned at elections, by the oaths being so administered, insomuch that at many places it was considered, that it might become impracticable to receive the votes of all the electors,



within the time limited for the duration of the poll.

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In order to remedy this inconvenience, provision was made by the stat. 34 Geo. 3. c. 73, authorizing the appointment of persons for this particular purpose.

It will be seen, that with respect to the oaths to be administered by such persons when appointed, the law has been altered more than once; but as regarding their appointment, (such alteration being kept in view), it depends principally upon that statute.

It is proper, in the first instance, to observe, that all the provisions of the law upon the subject, apply alike to elections for knights of the shire, and to other elections; and that the powers of the stat. 34 Geo. 3. c. 73, are generally adopted by the subsequent act of the 42 Geo. 3. c. 62, and therefore, (with the exception of the alteration above mentioned), whatever is stated as being enacted by the stat. 34 Geo. 3. c. 73, is to be taken as alike operating in cases under either act.

The stat. 34. Geo. 3. c. 73, (a), after reciting

At any election, upon a

(a) The stat. 34 Geo. 3. c. 73. "appointment of commissioners  
73. "An act for directing the "to administer certain oaths



## Sect. 5.

poll demanded,  
returning offi-  
cer, on re-

the delays and inconveniencies alluded to, directs, that when a poll shall be demanded at any election in *England, Wales, or Berwick-*

“ and declarations, required by  
“ law to be taken and made by  
“ persons offering to vote at  
“ the election of members to  
“ serve in parliament.”

“ Whereas great delays  
“ have arisen in the election  
“ of members to serve in par-  
“ liament, for places in *Eng-  
“ land, Wales, and the town  
“ of Berwick-upon-Tweed*, by  
“ the time and place in which  
“ the oaths of allegiance, su-  
“ premacy, the declaration of  
“ fidelity, the oath of abjura-  
“ tion, and the declaration or  
“ affirmation of the effect  
“ hereof, are usually admi-  
“ nistered to electors; and in  
“ many places it might there-  
“ by be rendered impracti-  
“ cable to receive the votes of  
“ all persons claiming and hav-  
“ ing a right to vote within the  
“ time limited by law, for the  
“ duration of the polls at such  
“ elections:” “ Be it en-  
“ acted, by the king’s most  
“ excellent majesty, by and  
“ with the advice and consent  
“ of the lords spiritual and  
“ temporal, and commons, in  
“ this present parliament as-  
“ sembled, and by the autho-  
“ rity of the same, that from  
“ and after the passing of this  
“ act, when a poll shall be  
“ demanded at any election,  
“ of a member or members to

“ serve in parliament, for any  
“ county, city, borough, or  
“ other place, in *England* or  
“ *Wales*, or for the town of  
“ *Berwick-upon-Tweed*, the  
“ returning officer, or officers,  
“ at every such election, after  
“ such poll shall be demand-  
“ ed, shall, at the instance  
“ and request, in writing, of  
“ any of the candidates, un-  
“ der his or their hand or  
“ hands, immediately after  
“ such request, and before  
“ he or they shall proceed  
“ further in taking the poll,  
“ retain, nominate, and ap-  
“ point, two or more persons,  
“ to administer the oaths of  
“ allegiance, supremacy, the  
“ declaration of fidelity, the  
“ oath of abjuration, and the  
“ declaration or affirmation  
“ of the effect thereof, now re-  
“ quired by law to be taken,  
“ made, or subscribed by vo-  
“ ters at elections of members  
“ to serve in parliament, and  
“ to certify the names of the  
“ respective electors, who  
“ shall take such oaths, or  
“ subscribe and make such  
“ declarations or affirmations  
“ respectively, in manner  
“ herein-after mentioned; and  
“ the persons to be appointed  
“ as aforesaid, or in manner  
“ herein-after mentioned,  
“ shall, respectively, have



## Sect. 5.

upon-Tweed, the returning officer shall thereupon, at the instance and request, in writing, of any of the candidates, under his or their hand, immediately after such request, and before proceeding further in taking the poll, appoint

quest, in writing, from a candidate, under his hand, to appoint two or more com-

“ full power, and each of  
 “ them is hereby authorized  
 “ and required to administer  
 “ all and every such respec-  
 “ tive oaths, declarations, and  
 “ affirmations, to every such  
 “ elector, who shall desire or  
 “ be required to take the same  
 “ oaths, or any of them, or to  
 “ subscribe or make the said  
 “ declarations and affirma-  
 “ tions respectively, previous  
 “ to his voting at any such  
 “ election; and every such  
 “ person so appointed as  
 “ aforesaid, shall, immediately  
 “ after such appointment, and  
 “ before he shall take upon  
 “ him to act under such ap-  
 “ pointment, take the follow-  
 “ ing oath.” [Then follows  
 the oath, for which see App.  
 xxxiii \*]. “ Which oath, to be  
 “ taken by the respective per-  
 “ sons so to be appointed, the  
 “ returning officer or officers  
 “ at every such election, and  
 “ his or their deputy and de-  
 “ puties, or any of them, is  
 “ and are hereby authorized

“ and required to adminis-  
 “ ter.”

§ 2. And be it further en-  
 “ acted, by the authority  
 “ aforesaid, That after the  
 “ persons so appointed shall  
 “ have taken such oath, so  
 “ required to be taken by them  
 “ respectively, as aforesaid,  
 “ any person or persons  
 “ claiming to vote at any such  
 “ election as aforesaid, may,  
 “ at any time before he or  
 “ they shall give his or their  
 “ vote or votes at such elec-  
 “ tion, apply to any one of  
 “ the persons so appointed  
 “ and sworn as aforesaid, to  
 “ take the said oaths of alle-  
 “ giance and supremacy, and  
 “ abjuration, or any of them,  
 “ or to subscribe the said de-  
 “ claration of fidelity, and  
 “ make the said declaration  
 “ or affirmation of the effect  
 “ of the said oath of abjura-  
 “ tion, or either of them; and  
 “ the person to whom such  
 “ application shall be made,  
 “ shall accordingly administer

\* The oath which was given by the above act, in consequence of the extended powers given to the persons to be appointed to administer oaths, by the stat. 42 Geo. 3. c. 62, became not sufficiently large, and the latter act gave a new oath, but since the alteration of the law, by the stat. 43 Geo. 3, neither oath seems strictly applicable.



## Sect. 5.

missioners to  
administer  
oaths.

two or more persons to administer the oaths of allegiance, supremacy, the declaration of fidelity, the oath of abjuration, and the declaration or affirmation of the effect thereof, and to certify the names of electors taking such oaths, and making such declarations or affirmations; the act at the same time authorizing and requir-

“ the same to such person or  
“ persons, so claiming a right  
“ to vote, and shall immedi-  
“ ately, upon such oaths be-  
“ ing taken, or declarations  
“ or affirmations respectively,  
“ being subscribed or made,  
“ sign and deliver a certificate  
“ thereof to such person who  
“ shall have taken such oaths,  
“ or made or subscribed such  
“ declarations or affirmations  
“ respectively, which certifi-  
“ cate shall contain the name,  
“ addition, and place of  
“ abode, of the person to  
“ whom the same shall be so  
“ given; and in case of per-  
“ sons taking the said oaths,  
“ shall be in the terms fol-  
“ lowing.” [*Then follows the  
certificate, for which see the  
App. xxxiv.*] “ And in case of  
“ quakers subscribing the said  
“ declaration of fidelity, or  
“ taking their affirmation of  
“ the effect of the said oath of  
“ abjuration, shall be in the  
“ form following.” [*Then fol-  
lows the certificate, for which  
see App. xxxiv.*] “ And every  
“ such person to whom such  
“ certificate shall be so given,

“ and having a right to vote  
“ at such election, shall, on  
“ producing such certificate  
“ to the returning officer or  
“ officers, or other person or  
“ persons lawfully taking the  
“ poll at such election, be  
“ permitted to poll, and his  
“ vote shall be taken and re-  
“ ceived in like manner as if  
“ such respective oaths, de-  
“ clarations, or affirmations,  
“ mentioned and expressed in  
“ such respective certificates,  
“ had been administered by,  
“ and made, subscribed, or  
“ taken before the returning  
“ officer or officers, at such  
“ election.”

§ 3. “ And be it further  
“ enacted, by the authority  
“ aforesaid, that when any  
“ person or persons offering  
“ to vote at any such election,  
“ without producing such  
“ certificate as aforesaid, shall  
“ be lawfully required to take  
“ the said oaths of allegiance,  
“ supremacy, and abjuration,  
“ or any of them, or to sub-  
“ scribe the said declaration  
“ of fidelity, and make the  
“ said declaration or affirma-



ing the persons so appointed, to administer the same, they themselves being previously sworn according to the act.

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(For the oath,  
see App. xxxiii.)  
(But see post,  
601.)

The persons thus appointed and sworn become the commissioners for administering oaths. And if during the poll it shall be found that their number is insufficient, and that the poll is in consequence delayed, the returning officer may, by § 4, in such case, at the in-

If, during poll,  
number of  
commissioners  
prove insuffi-  
cient, &c.

“tion of the effect of the said  
“oath of abjuration, or either  
“of them, then such oaths,  
“subscription, declarations,  
“or affirmations, or any of  
“them, shall not be admi-  
“nistered by the returning  
“officer or officers, or other  
“person or persons taking  
“the poll, but the elector or  
“electors so required to take  
“such oaths, or to subscribe  
“or make such declarations  
“or affirmations respectively,  
“shall immediately withdraw,  
“and shall take the said oaths,  
“or subscribe and make  
“the said declarations or affir-  
“mations respectively, before  
“one of the persons appoint-  
“ed and sworn as aforesaid,  
“in manner herein-before  
“mentioned.”

§ 4. “And be it further  
“enacted, by the authority  
“aforesaid, that if at any  
“time during the poll at any

“such election, it shall be  
“found that the number of  
“persons so appointed as  
“aforesaid, is insufficient for  
“the purposes aforesaid, and  
“that the poll is delayed for  
“want of a sufficient number  
“of persons to administer  
“such oaths, declarations,  
“and affirmations, as afore-  
“said, then and in every  
“such case the returning  
“officer or officers at such  
“election may, and he or  
“they is and are hereby em-  
“powered and required, at  
“the instance and request,  
“in writing, of any candi-  
“date then present, to retain,  
“nominate, and appoint such  
“further number of persons,  
“for the purpose of adminis-  
“tering the said oaths, de-  
“clarations, and affirmations  
“as aforesaid, and of grant-  
“ing such certificates as  
“aforesaid, as shall be neces-



## Sect. 5.

On request,  
&c. more may  
be appointed.

stance and request, in writing, of any candidate present, appoint such further number as shall be necessary to prevent such delay, which

“ sary to prevent such delay,  
“ and the persons so nomi-  
“ nated and appointed shall  
“ take the like oath, which  
“ shall be administered to  
“ them respectively in like  
“ manner as is herein-before  
“ directed, with respect to  
“ the persons first appointed  
“ for the purposes aforesaid.”

§ 5. “ And be it further  
“ enacted, by the authority  
“ aforesaid, that the returning  
“ officer or returning officers,  
“ at every such election shall,  
“ and is and are hereby re-  
“ quired to appoint, find, and  
“ provide a proper place for  
“ every such person so ap-  
“ pointed as aforesaid, to ex-  
“ ecute the duty hereby im-  
“ posed upon such person, to  
“ which place the respective  
“ electors may have free ac-  
“ cess, without interrupting  
“ the poll, and so as to  
“ enable the persons so ap-  
“ pointed to act separately,  
“ without interfering with  
“ each other in the exe-  
“ cution of their office; and  
“ that each of the said places  
“ so appointed shall be open,  
“ and attended by the person  
“ or persons appointed to act  
“ there, during all such times  
“ as the poll at any such  
“ election shall be kept open,  
“ and continue at least eight  
“ hours in every day, between  
“ the hours of eight in the

“ morning and eight in the  
“ evening, until the final close  
“ of the poll; and the said  
“ oaths, and the said decla-  
“ rations or affirmations of  
“ the effect of the said oath  
“ of abjuration, shall respec-  
“ tively be administered to as  
“ many of the electors, being  
“ ready, and desiring to take  
“ or make the same respec-  
“ tively, as can conveniently  
“ take or make the same toge-  
“ ther, not exceeding the  
“ number of twelve at one  
“ time; and such returning  
“ officers shall also find, pro-  
“ vide, and deliver to each  
“ person, who shall be ap-  
“ pointed by him or them in  
“ manner aforesaid, a suffi-  
“ cient number of printed  
“ forms of the declaration of  
“ fidelity, required by law to  
“ be made and subscribed by  
“ quakers, before they can  
“ be admitted to vote at such  
“ election, with blanks therein  
“ for the names of the persons  
“ offering to make and sub-  
“ scribe the same, to be in-  
“ serted therein, one of which  
“ forms shall be filled up with  
“ the name of, and subscribed  
“ by, the persons desiring to  
“ make and subscribe the de-  
“ claration of fidelity; and  
“ such returning officer, or  
“ returning officers, shall also  
“ find, provide, and deliver  
“ to each person who shall be



additional commissioners are to be sworn by the same oath as those first appointed.

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The allowance to be made to such commissioners for their trouble and attendance, by § 6, is not to exceed a guinea a day, which is to be defrayed by the candidates, who are to repay the same, in equal proportions, to the returning officer.

Allowance to commissioners.  
(See the case of *Morris v. sir Francis Burdett*, ante, 545.)

“ so appointed by him or  
“ them as aforesaid, a sufficient number of printed  
“ certificates, agreeable to the  
“ form herein-before directed  
“ to be filled up as occasion  
“ shall require, and deliver  
“ to each elector so taking the  
“ said oaths, or subscribing  
“ or affirming as aforesaid.”

§ 6. “ And be it further  
“ enacted, by the authority  
“ aforesaid, that in case the  
“ candidates, or any of them,  
“ shall, three days at the  
“ least before any such election,  
“ give, or cause to be given,  
“ notice in writing, to the  
“ returning officer or officers,  
“ to provide proper places for  
“ administering the said oaths,  
“ declarations, and affirmations  
“ as aforesaid, to the electors,  
“ then and in every such case,  
“ such proper places shall be  
“ prepared and provided, so as  
“ to be ready before and  
“ against the day of election;  
“ and in case there shall not

“ be a sufficient number of  
“ fit and convenient places  
“ for that purpose, at the  
“ town or place where such  
“ election shall be had, which  
“ the returning officer or officers  
“ can conveniently, and at a  
“ reasonable expence, procure,  
“ then the said returning officer  
“ or officers shall, and is and  
“ are hereby required to cause  
“ such booths or temporary erec-  
“ tions to be made, in convenient  
“ places in that behalf, as  
“ shall be necessary for the  
“ purpose, the expence of  
“ which booths or places, and  
“ of the said printed forms,  
“ and also the allowance and  
“ compensation to be made to  
“ the several persons who  
“ shall be appointed to administer  
“ the said oaths, declarations,  
“ and affirmations as aforesaid,  
“ for their trouble and attendance,  
“ not exceeding one pound one  
“ shilling a day to every of  
“ them, for each day of attendance,  
“ shall



## Sect. 5.

2. What oaths the commissioners may administer :

The provisions of the stat. 34 Geo. 3. c. 73, only empowered the commissioners to administer the particular oaths, declarations, and affirmations, which have been mentioned; the stat. 42 Geo. 3. c. 62, afterwards extended this power to the administration of all such as might be required to be taken by electors. This provision, however, has been again restricted by the stat. 43 Geo. 3. c. 74.

Commissioners were empowered to administer any oaths, &c.

The stat. 42 Geo. 3. c. 62, (*a*), after reciting the provision of the 34 Geo. 3. c. 73, for the

“ be defrayed and repaid by the  
 “ candidates \* at such elec-  
 “ tion, in equal proportions,  
 “ to the returning officer or  
 “ returning officers, who shall  
 “ have incurred such ex-  
 “ pence, and shall and may  
 “ be recovered by such re-  
 “ turning officer or returning  
 “ officers, in any of his ma-  
 “ jesty’s courts of record at  
 “ Westminster, by action of  
 “ debt, or on the case, bill,  
 “ suit, or information, wherein  
 “ no essoin, protection, or  
 “ wager of law, or more than

“ one imparlance, shall be  
 “ allowed.”

(*a*) The stat. 42 Geo. 3. c. 62. “ *An act for extending the provisions of an act, made in the thirty-fourth year of the reign of his present majesty, intituled, an act for directing the appointment of commissioners to administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in parliament, to all*

\* See the case of *Morris v. sir Francis Burdett*, before cited, page 545. 551, and 1 Campb. N. P. Rep. 218.



appointment of commissioners, further recites that there are other oaths, besides those enumerated in that act, which voters at elections may be required to take, the then mode of administering whereof was attended with delay and inconvenience, and that the delay and inconvenience intended by the recited act to have been prevented, were thereby only in part remedied, directs the returning officers, upon

*“ oaths now required by law  
“ to be taken by voters at elec-  
“ tions for members to serve in  
“ parliament.”*

*“ Whereas, by an act passed  
“ in the thirty-fourth year  
“ of the reign of his pre-  
“ sent majesty, intituled, An  
“ act for directing the appoint-  
“ ment of commissioners to  
“ administer certain oaths and  
“ declarations, required by law  
“ to be taken and made by per-  
“ sons offering to vote at the  
“ election of members to serve  
“ in parliament, it was,  
“ (amongst other things) en-  
“ acted, that when a poll  
“ should be demanded at any  
“ election of a member or  
“ members to serve in parlia-  
“ ment for any county, city,  
“ borough, or other place, in  
“ England or Wales, or for  
“ the town of Berwick-upon-  
“ Tweed, the returning officer,  
“ or officers, at every such  
“ election, after such poll  
“ should be demanded,  
“ should, at the instance and*

*“ request, in writing, of any  
“ of the candidates, under his  
“ or their hand or hands, im-  
“ mediately after such re-  
“ quest, and before he or  
“ they should proceed further  
“ in taking the poll, retain,  
“ nominate, and appoint two  
“ or more persons to admini-  
“ ster the oaths of allegiance,  
“ supremacy, the declaration  
“ of fidelity, the oath of ab-  
“ juration, and the declara-  
“ tion or affirmation of the  
“ effect thereof, required by  
“ law to be taken, made, or  
“ subscribed by voters at  
“ elections of members to  
“ serve in parliament: and  
“ whereas there are other  
“ oaths, besides those enume-  
“ rated in the said act, which  
“ voters at elections of mem-  
“ bers to serve in parliament  
“ may be, by law, required  
“ to take, the present mode  
“ of administering whereof is  
“ attended with delay and in-  
“ convenience, and the delay  
“ and inconvenience intended*



## Sect. 5.

request of any candidate or candidates, in like manner, to appoint two or more persons, (as the case may require), to administer all the oaths, and take the declarations or affirmations then required by law, to be taken and made by voters at elections, and to certify the same in

“ by the said act to have been  
 “ prevented, are thereby only  
 “ in part remedied :” “ Be it  
 “ therefore enacted by the  
 “ king’s most excellent ma-  
 “ jesty, by and with the ad-  
 “ vice and consent of the lords  
 “ spiritual and temporal, and  
 “ commons, in this present  
 “ parliament assembled, and  
 “ by the authority of the  
 “ same, that, from and after  
 “ the passing of this act,  
 “ when a poll shall be de-  
 “ manded at any election of a  
 “ member or members to  
 “ serve in parliament for any  
 “ county, city, borough, or  
 “ other place, in *England* or  
 “ *Wales*, or for the town of  
 “ *Berwick-upon-Tweed*, the  
 “ returning officer or officers  
 “ at every such election, after  
 “ such poll shall be demand-  
 “ ed, shall, at the instance  
 “ and request, in writing, of  
 “ any candidate or candidates  
 “ at such election, under his  
 “ or their hand or hands, im-  
 “ mediately after such re-  
 “ quest, and before he or  
 “ they shall proceed further  
 “ in taking the poll, retain,  
 “ nominate, and appoint two  
 “ or more persons, (as the

“ case may require), severally  
 “ and at different places, se-  
 “ parate and apart from the  
 “ place where the poll shall  
 “ be taken, to administer all  
 “ the oaths, and take the de-  
 “ clarations and affirmations,  
 “ now required by law to be  
 “ taken and made by voters  
 “ at elections of members to  
 “ serve in parliament, and to  
 “ certify the names of the se-  
 “ veral and respective electors  
 “ who shall take such oaths,  
 “ and make such declarations  
 “ and affirmations respec-  
 “ tively, in the manner pre-  
 “ scribed by the said recited  
 “ act ; and the persons to be  
 “ appointed as aforesaid shall  
 “ respectively have full power,  
 “ and each and every of them  
 “ is hereby authorized and  
 “ required to administer all  
 “ and every such several and  
 “ respective oaths to, and  
 “ take such declarations and  
 “ affirmations from, every  
 “ such elector who shall de-  
 “ sire or be required to take  
 “ the same oaths, or make  
 “ the same declarations or  
 “ affirmations, or any of them,  
 “ previously to his voting at  
 “ any such election ; and



## Sect. 5.

the manner prescribed by the 34 Geo. 3; the 42 Geo. 3, authorizing and requiring such persons so to do, they previously taking the oath therein given (*a*), which is to be administered to them by the returning officer or officers, or his or their deputy or deputies, or any of them.

(For the oath,  
see App. xxxv.)

During the co-existence of the above-mentioned powers of these two statutes of the 34 and 42 Geo. 3, the commissioners to be appointed under them were authorized to administer to electors any oaths, declarations, or affirmations, which they might be required to take.

After a short interval, however, from the

“every such person so ap-  
“pointed as aforesaid, shall,  
“immediately after such ap-  
“pointment, and before he  
“shall take upon him to act  
“under such appointment,  
“take the following oath;  
“that is to say, [*Then follows  
the oath, for which see App.  
xxxv.*] “Which oath to be  
“taken by the several persons  
“respectively so to be ap-  
“pointed, the returning officer  
“or officers at every such  
“election, and his or their  
“deputy and deputies, and any  
“of them, is and are hereby  
“authorized and required to  
“administer.”

§ 2. “And be it further

“enacted, that all and every  
“the clauses, powers, direc-  
“tions, provisions, penalties,  
“and forfeitures, mentioned  
“and contained in the said  
“recited act of the thirty-  
“fourth year of the reign of  
“his present majesty, shall  
“be extended to this act, and  
“be applied for the purposes  
“thereof, in the same man-  
“ner as if the same were re-  
“peated and re-enacted in  
“the body of this present  
“act; any thing herein con-  
“tained to the contrary  
“thereof in anywise notwith-  
“standing.”

(*a*) See the observation,  
*ante*, 593, n.



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Bribery oath  
not to be ad-  
ministered by  
commissioners,  
but to be taken  
at the poll, ac-  
cording to the  
stat. 2 Geo. 2.  
c. 24.

passing the latter act, it was deemed expedient that the bribery oath should no longer be administered by such commissioners (*a*), but that it should be taken according to the directions of the stat. 2 Geo. 2. c. 24.

And accordingly, the statute 43 Geo. 3. c. 74 (*b*), after reciting the provision of that of the 42 Geo. 3. c. 62, just mentioned, repeals it

(*a*) In the *Taunton* case, 1803, commissioners had been appointed to administer oaths, the petitioning candidate having required the returning officers so to do, under the stat. 34 Geo. 3. c. 73. These commissioners administered all the oaths. The returning officers sent to them not to administer the bribery oath, and they themselves administered it. It was contended that this conduct of the returning officers avoided the election, on account of the provisions of the 42 Geo. 3. c. 74, 1 Peck. 428. 432. There was no decision upon the point, but the discussion is supposed to have led to the passing the 43 Geo. 3. c. 74.

(*b*) The stat. 43 Geo. 3. c. 74. "*An act for further regulating the administration of the oath or affirmation required to be taken by electors of members to serve in parliament, by an act, passed*

*in the second year of king George the second, intituled, An act for the more effectual preventing bribery and corruption in the election of members to serve in parliament.*"

"Whereas, by an act passed in the forty-second year of the reign of his present majesty, intituled, *An act for extending the provisions of an act, made in the thirty-fourth year of the reign of his present majesty, intituled, An act for directing the appointment of commissioners to administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in parliament, to all oaths now required by law to be taken by voters at elections for members to serve in parliament*, it was, among other things, enacted, that when a poll should be



so far as relates to the bribery oath, in the statute of 2 Geo. 2. c. 24, enacting that such oath shall be taken at the poll, immediately before

“ demanded at any election of  
 “ a member or members to  
 “ serve in parliament for any  
 “ county, city, borough, or  
 “ other place, in *England* or  
 “ *Wales*, or for the town of  
 “ *Berwick-upon-Tweed*, the re-  
 “ turning officer or officers, at  
 “ every such election, after  
 “ such poll should be de-  
 “ manded, should, at the in-  
 “ stance and request in writ-  
 “ ing of any candidate or can-  
 “ didates at such election, un-  
 “ der his or their hand or  
 “ hands, immediately after  
 “ such request, and before he  
 “ or they should proceed fur-  
 “ ther in taking the poll, re-  
 “ tain, nominate, and appoint,  
 “ two or more persons, (as the  
 “ case might require), seve-  
 “ rally and at different places,  
 “ separate and apart from the  
 “ place where the poll should  
 “ be taken, to administer all  
 “ the oaths, and take the de-  
 “ clarations and affirmations  
 “ then required by law to be  
 “ taken and made by voters  
 “ at elections of members to  
 “ serve in parliament; and  
 “ whereas it is expedient that  
 “ the oath or affirmation re-  
 “ quired by an act passed  
 “ in the second year of his  
 “ late majesty, king *George*  
 “ the second, intituled, *An*  
 “ *act for the more effectual*  
 “ *preventing bribery and cor-*

*ruption in the elections of*  
*members to serve in parlia-*  
*ment*, to be taken or made  
 “ by every freeholder, citizen,  
 “ freeman, burgess, or person  
 “ having, or claiming to have,  
 “ a right to vote or be polled  
 “ at any election of any mem-  
 “ ber or members to serve for  
 “ the commons in parliament,  
 “ should be taken or made  
 “ by such freeholder, citizen,  
 “ freeman, burgess, or person  
 “ at the poll, immediately be-  
 “ fore he is admitted to poll  
 “ at such election:” “ Be it  
 “ therefore enacted, by the  
 “ king’s most excellent ma-  
 “ jesty, by and with the ad-  
 “ vice and consent of the  
 “ lords spiritual and tempo-  
 “ ral, and commons, in this  
 “ present parliament assem-  
 “ bled, and by the authority  
 “ of the same, that from and  
 “ after the passing of this act,  
 “ so much of the said recited  
 “ act, passed in the forty-  
 “ second year of his present  
 “ majesty, as respects the said  
 “ oath or affirmation required  
 “ by the said act, passed in  
 “ the second year of king  
 “ *George* the second, shall be  
 “ and is hereby repealed; and  
 “ that, from and after the  
 “ passing of this act, the said  
 “ oath or affirmation shall be  
 “ taken or made by every  
 “ such freeholder, citizen,



## Sect. 5.

polling, in manner prescribed by that act, if demanded by a candidate, or any two electors.

3. Whereupon, and in what manner the commissioners may administer oaths, and how they are to certify :

Persons before polling may apply to a commissioner to administer oaths, &c.

who is to administer the same, and give certificates.

On production of certificate, elector to be entitled to vote.

By the stat. 34 Geo. 3. c. 73. § 2 (*a*), persons claiming to vote may, at any time before polling, apply to any one of the commissioners, in order to taking the oaths, declarations, or affirmations, or either of them (except that in the 2 Geo. 2. c. 24.); whereupon such commissioner is to administer the same to the persons so applying; and having so done, he is to sign and deliver to every such person, a certificate thereof, according to the form in the act (*b*), in order to entitle him to poll; upon the production of which, he will be equally entitled so to do as if the oaths, declarations, or affirmations expressed therein, had been taken before the returning officer.

“ freeman, burgess, or person  
“ at the poll, and immediately  
“ before he is admitted to  
“ poll at such election, in  
“ manner prescribed by the  
“ said act, passed in the second  
“ year of his late majesty king  
“ George the second, in case  
“ the same shall be demanded  
“ by either of the candidates,  
“ or any two of the electors.”

(*a*) For this clause, see *ante*, 593.

(*b*) For the form of certificate of taking the oaths, &c. see *App.* xxxiv.

For the form of certificate of quakers subscribing the declaration of fidelity, or taking their affirmation to the effect of the oath of abjuration, see *App.* xxxiv.



And by the stat. 34 Geo. 3. c. 73. § 3, just mentioned, when any persons offering to poll without producing such certificate, are lawfully required to take, subscribe, or make, the oaths, declarations, or affirmations, or any of them, the same (with the exception of the bribery oath, by the stat 43 Geo. 3. c. 74), are not to be administered by the returning officers, or persons taking the poll, but are to be taken or subscribed, and made before such commissioners.

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Persons offering to poll without producing certificate, if required to take oaths, &c. to take any except bribery oath before commissioners.

In the administration of oaths, declarations, and affirmations, the stat. 34 Geo. 3. c. 73. § 5, directs that they shall be administered at one time, to as many of the electors, not exceeding twelve, being ready, and desiring to take or make the same, as can conveniently take or make it together.

Oaths, &c. to be administered to as many as can conveniently take them at once, not exceeding 12.

The same clause also directs, that returning officers shall provide, and deliver to each of such commissioners, a sufficient number of printed forms of the declaration of fidelity required by law to be made and subscribed by quakers before voting, with blanks therein, for the names of the persons offering to make and subscribe the same, one of which to be filled up with the name, and subscribed by each person

Returning officers to provide and deliver to commissioners printed forms of declarations of fidelity, with blanks for names, to be filled up and subscribed by persons making declaration.



## Sect. 5.

desiring to make and subscribe such declaration.

Copies of printed certificates, &c. to be provided and delivered in like manner.

And by the same clause, returning officers are in like manner to provide and deliver to each commissioner a sufficient number of printed certificates, according to the form in the act; the expence of which is, by § 6, to be defrayed by the candidates in equal proportions.

#### 4. Of providing places, wherein for the commissioners to act:

Returning officer to find and provide a proper place for each commissioner,

to which electors may have free access, &c.

With a view of rendering the regulations for the administration of oaths as conducive as possible to the end in view, the same statute, of the 34 Geo. 3. c. 73, by § 5 (a), requires the returning officer to find and provide a proper place for every commissioner, wherein he is to execute the duty imposed upon him; to which place the electors may have free access, without interrupting the poll, and so as to enable such commissioners to act separately, without interfering with each other.

Places to be kept open while the poll is open; eight hours at least,

And each of such places, by the same clause, is to be open, and attended by the person or persons appointed to act there, during the whole

(a) For this clause, see *ante*, 596.



time that the poll shall be kept open, and is so to continue at least eight hours every day, between eight in the morning and eight in the evening, until the close of the poll.

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between eight in the morning and eight in the evening, until poll closed.

In the same manner as for taking the poll, the stat. 34 Geo. 3. c. 73, has given an option to the candidates to make previous preparation of places for the above purpose, if they shall be so advised; it being provided, by § 6, of the act, that upon notice in writing from the candidates, or any of them, three days at the least before the election, to provide proper places, such proper places shall be provided before and against the day of election; and in case there shall not be a sufficient number of fit and convenient places for this purpose at the place of election, which the officer can conveniently, and at a reasonable expence, procure, he is then to cause such booths, or temporary erections, to be made, as shall be necessary for the purpose, the expence whereof is to be borne by the candidates, and who are to repay it as in the case of other expences incurred by the returning officer under that act (a).

On notice in writing from a candidate, three days before election,

proper places to be provided;

if none fit and convenient in the place, &c.

booths to be erected, at expence of candidates.

(a) See the case of *Morris v. sir Francis Burdett*, ante, 545.



## Sect. 6.

SECTION 6. *Scotland.*County elec-  
tions.

WITH respect to elections for commissioners of shires :

(Ante, 524.  
539.)

App. civ.  
Freeholders to  
meet for elec-  
tion in the  
room where  
sheriff's court  
usually holden.  
App. cv.

Meeting to be  
between mid-  
day and two  
o'clock.

Proceedings  
thereat.

(See ante, 510.)

At the place and on the day before stated, the freeholders assemble for the purpose of choosing commissioners. By the *Scots* act of 1681, c. 21, they are to meet in the room where the court of the sheriff or steward is usually holden, which room is to be "patent to them, and all others removed but whom they call;" the same act directing them to meet betwixt mid-day and two in the afternoon.

At such meeting, the sheriff or steward shews that the proper preliminaries have been observed, by producing the writ, with his precept for intimation of the election, the execution of the same by his officers at the head borough (a), and the returns by the precentors of the parish churches.

The writ being read by the sheriff-clerk or

(a) For the form of an execution of the sheriff's intimation, see *App.* cxci.iii.



stewart-clerk, the stat. 2 Geo. 2. c. 24 (*a*), is also read (*b*).

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Writ, and also bribery act to be read.

*App.* xii.

See *ante*, 566.

*Ante*, 487.

Commissioner last elected to administer oaths.

Thereupon the duty of the sheriff, or stewart, ceases, and the commissioner last elected takes the chair as before mentioned, and proceeds to administer the oaths to the electors.

The oaths are, some of them, in all instances exacted, others are to be taken only upon a requisition so to do.

Of the former, the oath of allegiance was

Oath of allegiance.

*App.* cvi. (*a*).

(*a*) It is also usual to read § 38, of the stat. 16 Geo. 2. c. 11, which repeals the third clause of 2 Geo. 2. c. 24, requiring sheriffs, &c. to take the oath therein, as far as it relates to returning officers in Scotland. *App.* xv. clxxviii.

(*b*) In the case of *North Berwick*, 1775. The stat. 2 Geo. 2. c. 24, which by § 9, is to be openly read at the annual election of magistrates and town counsellors for every borough in Scotland, as well as at those of members of parliament, was not read at such annual election, either at *Haddington* or *Jedburgh*. The delegates for those burghs had voted for Mr. *Maitland* the sitting member, and it

was contended by sir *Alexander Gilmour*, the petitioner, that the election of magistrates, and consequently their election of delegates, was upon this account void. If such had been the decision of the committee, the effect would have been to have given the petitioner the majority of legal votes. The committee however held that Mr. *Maitland* was duly elected. 2 Doug. 452.

As to the law in cases of the irregular administration of oaths, see *ante*, 425, and *post*, chap. 11. sect. 2.

For the general law as to administration of oaths to Quakers, also Moravians, *post*, chap. 11. sect. 2.



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ordained by the *Scots* act of 1690, c. 4, to be taken and subscribed by all electors in shires or burghs royal; and if they did not so do, they were not only to be rejected from voting, and excluded the meeting, but, if they should presume to stay or vote therein, their votes were not to be reckoned, and themselves were to be fined in 1000 marks.

*App. cvi. (b).*  
The assurance.

The assurance was ordained by the *Scots* act of 1690, c. 38, to be subscribed by all persons who were in law obliged to take the oath of allegiance. And with respect to both of these, the *Scots* act of 1693, c. 6, ordained, that the oath of allegiance should be taken, and the assurance subscribed by all electors of members of parliament, before they elect; and that the two should be taken jointly, declaring that those who refuse one, shall be taken as refusing both.

*App. cvi. (b).*  
Oath of allegiance and assurance to be taken, &c. by all electors.

Form of oath  
of allegiance.

With regard to the form of the oath of allegiance, when it was required to be taken by the *Scots* act of 1690, c. 4, it depended upon the *Scots* act of 1689, c. 2. The *Scots* act of 1702, c. 1, gave a new form, and that which is now taken depends upon the stat. 1 Geo. 1. stat. 2. c. 13 (a).

(a) See *App. cvi. (c)*, n. and *post*, 636, n. (a). For the oath see *App. xxv*.



A form of the assurance was given by the act above-mentioned, as requiring it to be taken; a new form was given by the stat. 1 Geo. 1. stat 2. c. 13. § 3, for which the stat. 6 Geo. 3, substituted that which is now taken (*a*). Sect. 6.  
Form of the assurance.

As to the oaths to be taken upon requisition only; the abjuration oath (*b*), by the stat. 6 Ann. c. 23. § 13, explained by the stat. 1 Geo. 1. c. 13, is to be taken by electors, if it is demanded by a candidate, or any person present, and persons refusing it, are incapable of voting. Abjuration oath may be required.  
App. cxxxiv. cxlii.

The act of union, in declaring who shall be capable to elect for any of the estates of parliament, excludes all papists, or such who, being suspected of popery, and required, refuse to swear and subscribe the *formula* contained in the *Scots* act of 1700, c. 3. This therefore may be required of the electors (*c*). App. cxvi.  
Formula may be required.

Another general oath which may be required, is that which is founded upon the stat. 19 Geo. 2. c. 38 (*d*), which disqualifies persons Oath may, under 19 Geo. 2. c. 38. be administered as herein.

(*a*) App. cvi. (*c*), n. (*b*), where see the assurance.

(*c*) For the *formula* see App. cxvi. n.

(*b*) For the oath see App. xxvii. See the alterations in the oath traced, *post*, chap. 11. § 2.

(*d*) The stat. 19 Geo. 2. c. 38. "An act more effectually to prohibit and prevent pastors or ministers from officiating



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from voting, who shall, within one year preceding the election, have been twice present at divine service in any episcopal meeting or con-

*“ in episcopal meeting-houses  
“ in Scotland, without duly  
“ qualifying themselves accord-  
“ ing to law; and to punish per-  
“ sons for resorting to any  
“ meeting-houses where such  
“ unqualified pastors or mini-  
“ sters shall officiate.”*

§ 12. “ And be it further  
“ enacted, by the authority  
“ aforesaid, that from and  
“ after the said first day of  
“ September, no person shall  
“ be capable of being elected,  
“ or of voting in any election  
“ of a member of parliament  
“ for any shire or borough,  
“ in that part of *Great*  
“ *Britain* called *Scotland*, or  
“ of being elected, or voting  
“ in the election of a magis-  
“ trate or counsellor for bo-  
“ roughs, or of a deacon of  
“ crafts within burgh, or of  
“ a collector or clerk of the  
“ land tax, or supply, who  
“ shall have at any time  
“ within one year preceding  
“ such election, been twice  
“ present at divine service,  
“ in any episcopal meeting or  
“ congregation in *Scotland*,  
“ not held and allowed in  
“ pursuance of the said act,  
“ made in the tenth year of  
“ the reign of queen *Anne*,\*

“ or which shall not, after  
“ the said first day of Sep-  
“ tember, be registered ac-  
“ cording to the directions  
“ of this act, or where the  
“ pastor or minister offici-  
“ ating, did not, in express  
“ words, pray for his ma-  
“ jesty, his heirs or succes-  
“ sors, by name, and for all  
“ the royal family; and it  
“ shall be competent for any  
“ candidate or member of the  
“ meeting, assembled for any  
“ such election, to make this  
“ objection, and to prove the  
“ same by a witness or wit-  
“ nesses upon oath, or by re-  
“ ferring it to the oath of the  
“ person objected to, which  
“ oath the preses or clerk of  
“ such meeting is hereby im-  
“ powered to administer, and  
“ in case the same shall be  
“ proved, or the person so  
“ objected to shall admit the  
“ fact, or refuse to depose  
“ concerning it, he shall be,  
“ and is hereby disqualified  
“ from, and rendered inca-  
“ pable of voting, or being  
“ chosen at any such election  
“ as aforesaid; but such ad-  
“ mission, or confession upon  
“ oath, or otherwise so made  
“ at such meeting, assembled  
“ for any such election, shall

\* The stat. 10 Ann. c. 7.



gregation in *Scotland*, not held and allowed in pursuance of the stat. 10 Ann. c. 7, or not registered under that act of the 19 Geo. 2, or where the pastor or minister did not, in express words, pray for his majesty, and the royal family; and this objection may be proved by witnesses upon oath, or by referring it to the oath of the person objected to; such oath to be administered by the preses or clerk of the meeting.

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The bribery oath in the stat. 2 Geo. 2. c. 24, is also to be administered to any elector of whom it is required.

*App. xiii.*  
Bribery oath  
may be re-  
quired.  
(See chap. 11.  
sect. 2.)

By the stat. 12 Ann. c. 6. § 1, the trust oath is also to be taken, if required, by any elector, and persons refusing to swear and subscribe the same, are thereby made incapable of voting, it being declared at the same time by that act, (§ 2.) that notwithstanding such oath taken it shall be lawful to make such other objections as are allowed by the law of *Scotland* against such electors. That act gave a form of oath, for which another form was substituted by the stat. 7 Geo. 2. c. 16. § 2, which is now taken; § 3, of the latter act, imposing the penalty of perjury on persons falsely swearing.

*App. cxxxvii.*  
Trust oath  
may be re-  
quired.

*App. cxliv.*  
(where, see the  
oath.)

"not be made use of, or  
"given in evidence against  
"any such person, upon any  
"prosecution, for any penalty  
"inflicted by this or any for-  
"mer act of parliament."



## Sect. 6.

Production of  
freeholders  
roll, &c.

App. clvii.

Choice of  
preses and  
clerk, &c.  
*ante*, 487.

*Ante*, 495.

App. cv. clviii.  
Objections to  
the roll.

The oaths having been administered, the books containing the freeholders roll, as made up at the last meeting, and the minutes of such meeting, are then produced by the sheriff clerk, or steward's clerk, under the penalty of £100 by the stat. 16 Geo. 2. c. 11. § 11; and if not the books, a copy of such roll and minutes, extracted and signed by such clerk, must be produced. This done, the electors proceed to the choice of a preses and clerk, the manner of which has been already stated (*a*).

The preses, when elected, receives the roll from the person who presided at his election, and proceeds to administer the oaths to the clerk.

According to the *Scots* act of 1681, c. 21, and the stat. 16 Geo. 2. c. 11. § 12, this is the proper period for bringing forward claims to be put upon the roll, or to make objections to the title of any persons, who are upon the roll.

(*a*) According to the plan hitherto pursued, the remainder of the proceedings would belong to the following chapter, but, as in *Scotland*, the great contest is in the sub-elections of preses and clerk, and of delegates, when these sub-elections have been made, it is pretty well ascertained what will be the result of the principal election. Hence, the proceedings at the poll bear but little analogy to those in *England* and *Ireland*, and upon that account it has been thought better to continue the proceedings at the election without interruption.



These questions are decided by the freeholders, the preses having always, by the stat. 16 Geo. 2. c. 11. § 13, the casting voice in the case of equality.

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Roll adjusted,

When the roll is adjusted, the preses, under the penalties before-mentioned, proceeds to call the same, and to receive the votes accordingly; any persons who may be dissatisfied with any decisions of the meeting, making their protest against them.

and called;  
election made  
by the votes  
thereupon.  
*Ante,*

When the votes are given, the preses himself, giving the casting vote, if they are equal, declares who has the majority, and that he is elected representative of the county. And the minutes being then read over and signed, the meeting is dissolved.

*App. cxli.*

At elections for *Edinburgh*:—The proceedings are under no particular statutory regulations, further than the general requisition of the stat. 6 Ann. c. 23.

*Edinburgh.*

Proceedings at  
the election.

The election takes place according to the previous appointment. The same general oaths are taken either in all instances, or if required, as at elections for knights of shires, with the exception of the bribery oath, for which that, in the stat. 16 Geo. 2. c. 11. § 34, is substituted.

*Ante, 609, 610.*



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App. clxxiv.

The oaths being taken, the sheriff's precept to the lord provost, and also his to the council being read, and entered upon the minutes, the candidates are proposed, and the votes given according to the roll, which is called by the clerk. The majority being ascertained, and the result declared by the lord provost, the clerk is thereupon ordered to certify the name of the person elected to the sheriff. And the minutes being completed, the meeting ends.

Elections for  
districts of  
burghs.  
Manner of  
election.  
*Ante*, 525. 539.

At elections for districts of burghs:—The delegates for the several burghs having been respectively chosen as before-mentioned, and convening at the proper place and time, the delegate for the presiding burgh acting as preses, and the common clerk of the same burgh acting as common clerk, the delegates produce to such common clerk the precepts to their several burghs, and also their commissions.

*Ante*, 496.

The stats. 2 Geo. 2. c. 24, and 16 Geo. 2. c. 11. § 38, are then read, the preses administers to the common clerk the oaths to government, who signs them together with the assurance; and having been sworn also according to the statute of Geo. 2, he reads the commissions, entering their substance in the minutes. Objections, if any to the commissions, are then taken,



whereupon the clerk decides according to the  
stat. 16 Geo. 2. c. 11. § 30.

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App. clxxii.

By § 32 of that act, if any person, to whom  
no commission has been made out, insists that  
he was duly elected a delegate from any royal  
burgh, he is to be admitted to the meeting, and  
may offer to take all the oaths required by law,  
and declare for whom he would have voted, had  
he been duly commissioned; whereupon the  
oaths are to be administered to him, and his  
declaration is to be entered in the minutes; but  
the clerk is not to receive him as a voter.—The  
commissions having been read, the clerk ad-  
ministers to the electors the oaths to govern-  
ment; and that in the 16 Geo. 2. c. 11. § 34,  
if required by any elector. The candidates are  
then proposed, and the delegates give their  
votes; that delegate, who is preses, having (by  
the act of union,) and, if he be absent, or refuse  
to vote, the delegate from the presiding borough  
at the last election, the last but one, or the last  
but two, having, (by the 16th Geo. 2. c. 11.  
§ 28.) a casting vote in case of equality. By the  
14th Geo. 3. c. 81. § 2. where the council of the  
borough, which ought to have been the presiding  
borough, has been reduced, and not revived, the  
casting vote is with the delegate from the borough  
next in turn to preside.

App. clxxiii.

App. clxxv.

App. cxv. clxx.

App. clxxxiii.



## Sect. 6.

The majority being declared, the clerk is ordered by the meeting to make the return. After which it only remains, at such meeting, for the minutes to be signed by the preses and clerk.

SECTION 7. *Ireland.*

## AS to appointing sub-sheriffs:

County elections.

*Ante*, sect. 4.

*App.* ccxl.

In what cases deputies to be appointed.

*Ante*, 561.

*Ante*, 562. (e).

*App.* cccxvi.

Where extra booths, a deputy to be at each.

With respect to elections for knights of shires:—The sheriff is enjoined by the *Irish* stat. 35 Geo. 3. c. 29. § 5, in those cases where booths or polling places are to be by him provided as before mentioned, also in the same cases to appoint a (a) deputy (b) for each booth or polling-place, except where he himself shall preside: And by the stat. 57 Geo. 3. c. 131. § 4. in those cases where extra booths or buildings are to be provided under that act, a corresponding number of deputies is to be appointed, and paid at the same rate, and in like manner as the others.

(a) By the stat. 57 Geo. 3. c. 131. § 30. no sheriff of any county in *Ireland* is to appoint any person to act as his deputy, unless such person shall be a freeholder of the county, having a freehold of the yearly value of £50 above all charges, and the sheriff is

to demand upon oath of such person whether he has such freehold?

(b) By the above clause, every such deputy is to be paid not exceeding a guinea a day each, at the joint expence of the candidates.



The *Irish* stat. 35 Geo. 3. c. 29. by § 7, provides, that the returning officer, notwithstanding the appointment of deputies, may himself take the poll at any of the booths or polling-places; so, he may change such deputies from one to another during the election, or he may remove them and appoint others; such changes or removals being, by § 11, to be made publicly, and proclaimed in the booth where they take place.—By § 9, every such deputy is, before he proceeds to take the poll, to take and subscribe the oath therein, in the presence of the returning officer, who is to administer the same, and a memorandum thereof is to be entered on the poll-book.

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*App. ccxlii.*  
Sheriff, notwithstanding appointment of deputies, may take the poll, or may change or remove deputies.

*App. ccxlv.*

Deputies to be sworn.

*App. cclxiii.*  
(where see the oath.)

The general duty of a deputy is to take the poll at the booth or place whereat he is stationed. And in so doing, by the stat. 57 Geo. 3. c. 131. § 16, when any person shall tender his vote as a freeholder, the deputy presiding at the booth or building is personally to examine such person as to his name and residence, and as to the value, tenure, and situation of his freehold, and whether it arises from a rent charge (a).

Duty of Sheriff's deputies.

*App. ccccxvi.*

To what points they may examine freeholders.

(a) By the above clause, no other person besides the deputy, whether barrister, attorney, agent, candidate, elector, or other person, is to plead, or speak to, or examine any person tendering his vote, on any pretence whatever, during the continuance of the poll, in any of the polling-booths. *App. ccccxvi.*



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App. ccxev.

App. cccxxvi.  
As to other  
points, ques-  
tions of dis-  
puted votes to  
be referred to  
returning  
officer.

Under the *Irish* stat. 37 Geo. 3. c. 47. § 12, when any question occurred respecting a right to vote, which the deputy might not think himself competent to determine, he was to call on the sheriff. The stat. 57 Geo. 3. c. 131, § 17, reciting doubts as to the power of the deputies in the rejection and examination of persons tendering their votes, restricts it to the examination above mentioned; and upon any objection arising as to the right of any person to vote, it is to be forthwith referred to the returning officer or officers; nor is any deputy to investigate such person's right to vote without such reference.

App. ccxliv.  
Deputies each  
day to give up  
their books on  
notice, &c.

By the *Irish* stat. 35 Geo. 3. c. 29. § 10, every deputy is, each day, upon notice from the returning officer, (which, by § 11, is to be publicly given in the place where he is taking the poll,) to close his poll-book, and deliver it up to such officer, under a penalty of £50 on refusal, or on continuing to take the poll after he shall have been directed to stop, or taking it before he shall be again directed to proceed; and votes subsequently taken by him are made void (a).

(a) By the stat. 57 Geo. 3. c. 131. § 28, any deputy-sheriff absenting himself is to forfeit all compensation for attendance at the election. And the returning officer, or officers, may, on such absence, immediately appoint another person, or persons, to act. And, by § 29, any deputy refusing or neglecting to perform his duty according to the act, is liable to the same penalty as re-



With respect to other elections (a):—It has been explained, that, in certain cases, returning officers are to provide booths, or polling-places, according to the *Irish* stat. 35 Geo. 3. c. 29. § 6. In such cases only, there is a corresponding provision for the appointment of a deputy for each booth or polling-place. And the before-mentioned provisions as to the duty and power of deputies, in the 57 Geo. 3. c. 131. § 16 and 17, apply in all cases where the right of election is in freeholders.

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In what cases deputies to be appointed.

Ante, 563.

Ante, 619, 620.

App. ccccxv.

With respect to the appointment of poll clerks:—Both at elections for knights of shires and other elections, this appointment, by the same respective sections of the *Irish* statute above mentioned, hinges upon the same circumstances as are necessary to authorize the providing booths, or appointing deputies to returning officers, clerks being to be appointed in the same number.—And by the stat. 57 Geo. 3. c. 131. § 4, where extra booths are to be provided under that act, a corresponding number of poll clerks (b) is to be appointed.—And, by

Poll clerks when to be appointed.

App. ccxl, ccxli.

Ante, 561, 563.

App. ccccxvi.  
(See ante, 562.)  
(e).Poll clerks to be sworn.  
(See ante, sect. 5.)

turning-officers, viz. of £10 for each instance of refusal or neglect. App. ccccxvii. ccccxviii. and see ante, 499.

(a) There is a provision for the appointment of poll-clerks and deputies at elections, holden by the sheriffs of Londonderry, by the *Irish*

stat. 40 Geo. 3. c. 80. § 2, which, as the same sheriffs hold the election for the county, and for the city and county, may apply to either; see ante, 562, n. App. ccccxv.

(b) The poll-clerks are, by the *Irish* stat. 35 Geo. 3. c.



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*App. ccccxvii.*  
(where see the  
oath.)

§ 26, every poll clerk, before taking the poll, is to take the oath therein, which is to be administered by the returning officer.

*App. cccxciii.*

With respect to the appointment of commissioners to administer oaths, and of their administration of the same to electors:—The stat. 51 Geo. 3. c. 77. § 4, provided, that, in order that persons desirous of taking the oaths and declarations in the *Irish* stats. 13 & 14 Geo. 3. c. 33, and 33 Geo. 3. c. 21, at any election, might have an opportunity of so doing; the returning officer, on demand of a poll, was, at the request therein, to appoint two or more justices to administer the same, as therein directed.

On poll demanded, officer on request to appoint commissioners to administer oaths.

*App. ccccxvii.*  
They may administer oaths; and what oaths.

*App. ccccxviii.*

Commissioners to be sworn.

—The 57 Geo. 3. c. 131. § 6, authorizes and requires such justices (*a*), severally, and at different places, apart from the place of polling, to administer all the oaths, declarations, and affirmations required of persons offering to vote, except the bribery oath or affirmation, which is to be taken as before the act, (§ 7. of the act giving an oath to be taken by such justices, in lieu of a former one, which oath is to be administered by the

29. § 6, and the 57 Geo. 3. c. 131. § 4, to be paid in the same manner as the deputies. *App. ccxli. ccccxvi.*

(*a*) An allowance, not exceeding one guinea a day, to such persons for their trouble and attendance, is authorized

by § 13. of the act, which is to be made up equally by all the candidates. And by § 28 and 29, they are subject to the same liabilities for absence or neglect of duty as the sheriff's deputies are. *App. ccccxviii. ccccxvii. ccccxviii.*



returning officer.)—And, by § 11, if the number of persons so appointed shall be insufficient, the returning officer, on request in writing of any candidate present, may appoint such further number as shall be necessary to prevent delay.

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*App. ccccxii.*  
(where see the oath.)  
Number may be increased.

The same statute, by § 8, directs, that after the persons so appointed shall have taken the oath required of them, any person claiming to vote may before voting, apply to any one of them, to administer the oaths, declarations, or affirmations, or any of them, and he is thereupon to administer the same (except the bribery oath or affirmation) to the person so applying, to whom a certificate thereof is to be thereupon given (*a*), and such person is to be deemed to have taken or made the oaths, declarations, or affirmations therein, on producing such certificate to the person taking the poll; (to whom, by § 10, the same is to be delivered, and by him cancelled.) And, by § 9, where a person shall offer to vote, without producing such certificate, and shall be called upon for the oaths, affirmations, or declarations, such are not to be administered by the returning officer, or person taking the poll, but he is to withdraw, and go before one of the commissioners for that purpose. The same act, by § 11, requires the

*App. ccccx.*  
Persons claiming to vote may apply to a commissioner to administer the oaths, &c.

Upon oath, &c. administered, certificate to person taking, &c.

*App. ccccx.*  
(where see the form of the certificate.)

Certificate to be evidence of having taken oaths, &c.

*App. ccccxii.*  
Certificate to be delivered up and cancelled.

*App. ccccx.*  
Persons offering to vote, not producing certificates, on oath, &c. required, to withdraw to a commissioner to have it administered.

(*a*) By § 12 and 13, printed forms of certificates are to be previously provided by the returning officer or offi-

cers, at the joint expence of the candidates. *App. ccccxii. ccccxiii.*



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*App. cccxxi.*  
Clerk of peace  
or deputy to be  
sworn, and to  
attend to give  
certificates.

*App. cccxix.*  
(where see the  
oath in lieu of a  
former one.)

*App. cccxxiii.*  
Oaths, &c. may  
be administered  
to electors,  
together, not  
exceeding 12.

*App. cccxciii.*

*App. cccxxii.*  
Returning of-  
ficers to ap-  
point proper  
places wherein  
for the commis-  
sioners and the  
clerk of the  
peace to act,  
&c.

clerk of the peace, or a deputy to be appointed by him, (being previously sworn, according to § 7 of the act,) to attend each of such justices (a), and to give, without fee or reward, to each person taking the oaths, or making the declarations, or affirmations, a certificate thereof; which certificate must contain their names, additions, and places of abode.—By § 12 the oaths and declarations are to be administered to as many of the electors together, not exceeding 12, being ready, and desiring to take or make the same, as can conveniently be done.

As to providing places wherein for such commissioners, &c. to act:—By the stat. 51 Geo. 3. c. 77, § 4, the oaths, &c. were to be administered in some convenient part of the court or place where the election was carrying on. But the stat. 57 Geo. 3. c. 131. § 12. directs the returning officer or officers to appoint, find, and provide a proper place wherein for the persons appointed under the act, (that is the commissioners and clerk of the peace or his deputy,) to execute their duty, to which the electors may have free access without interrupting the poll, and so as to enable the persons appointed to act separately without interfering with each other, each of which places is to be open, (and attended by the person or persons appointed to act there,)

(a) By § 11, for this attendance the clerk of the peace, or his deputy or deputies, are to receive not exceeding half a guinea a day each, to be defrayed by the candidates in equal proportions.



during all such times as the poll shall be open, and to continue so, at least eight hours in every day, between the hours of eight in the morning and eight in the evening, until the final close of the poll.—And by § 13, upon notice by the candidates, or any of them, three days at least before the election, the returning officer or officers must provide booths or other proper places for the purpose, so as to be ready against the day of election, the expence whereof is to be repaid by the candidates in equal proportions.

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Such places to be kept open eight hours a day, &c.

*App. ccccxiii.*  
On notice in writing from candidate three days before election, returning officer to provide booths, &c. for administering oaths, to be ready for election.

As to the appointment of interpreters:—By the stat. 57 Geo. 3. c. 131, § 15, returning officers are on demand or request in writing of any candidate or candidates, to appoint as many competent persons to act as interpreters (*a*) as there shall be places of polling, or places of taking the oaths, &c. so that one such interpreter shall attend each of such places, to translate faithfully the oaths, declarations, and affirmations, and such questions and answers as are by the act required to be taken, made, asked, or given at the place of polling, and before the persons appointed to administer oaths, &c. And every such interpreter is immediately upon his appointment, and before acting, to take the oath in the act, which the returning officer or officers are to administer.

*App. ccccxiv.*  
Returning officers on demand to appoint interpreters to attend at the poll,

and at places for administering oaths, &c.

Interpreters to be sworn.

*App. ccccxv.*  
(where see the oath.)

(*a*) By the same clause the allowance to be made to such persons for attendance, not exceeding half a guinea a day each, is to be defrayed by the candidates in equal proportions.



## CHAPTER XI.

## OF THE PROCEEDINGS DURING THE POLL.

SECTION 1. *Of commencing the poll; of the continuance thereof; and of the hours during which it is to be kept open.*

SECTION 2. *Of the administration of oaths to electors; what oaths may be required of electors in general, of electors at the different elections, and of electors at particular places.*

SECTION 3. *According to what right of voting votes are to be received on the poll; where, by what description, and in what manner votes shall be given; and of the tender of votes.*

SECTION 4. *Of the manner of taking the poll; and of receiving votes, with a query.*

SECTION 5. *Of the production of annuity registers, and land tax assessments.*

SECTION 6. *Scotland.*

SECTION 7. *Ireland.*

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**W**HEN a poll has been demanded, the returning officer is, in consequence, called upon to enter upon a most important duty, that



of receiving the votes of the electors, whereupon he is afterwards to found the return. The nature of his office, with regard to such duty, and his responsibility therein, has already been considered; it has also been seen, that, in order to the proper execution of his functions, he is powerfully protected, and is himself clothed with high authority.

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*Ante*, 467, *et seq.**Ante*, 468. 476, *et seq.**Ante*, 318.*Ante*, 330, 334.

The order of proceeding, in taking the poll, has been marked out by the two statutes of the 7 and 8 Will. 3. c. 25, and that of the 25 Geo. 3. c. 84.

By the stat. 7 and 8 Will. 3. c. 25. § 3, upon a poll required, it was to be proceeded in, *forthwith*, in some open or public place, to be appointed according to the directions of that act.

*Ante*, 518.

That statute only applied to elections for knights of shires; but now, at such election, or at any other, when a poll is demanded, it is by the stat. 25 Geo. 3. c. 84. § 1 (*a*), to commence on the day upon which it is demanded, or upon

At all elections, poll to commence on the day, on which it is demanded, or on the next day at farthest, unless it be on Sunday, and then on the day following.

(*a*) The stat. 25 Geo. 3. c. 84. (*For the title, see ante*, 533.) “For the better regulation of polls and scrutinies,” “Be it enacted, by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of August, one thousand seven hundred and



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(For punishment of returning officer disobeying the act, see § 13 of the act, post, 629.)

the next day at furthest, unless it be upon *Sunday*, and then upon the following day. At the time

“ eighty-five, every poll which  
 “ shall be demanded at any  
 “ election for a member or  
 “ members to serve in par-  
 “ liament for any county,  
 “ city, borough, or other  
 “ place, within *England*,  
 “ *Wales*, or for the town of  
 “ *Berwick-upon-Tweed*, shall  
 “ commence on the day upon  
 “ which the same shall be  
 “ demanded, or upon the  
 “ next day at furthest, (unless  
 “ it shall happen to be a  
 “ *Sunday*, and then on the  
 “ day after); and shall be  
 “ duly and regularly pro-  
 “ ceeded in from day to day  
 “ (*Sundays* excepted) until  
 “ the same be finished, but  
 “ so as that no poll for the  
 “ election of any member or  
 “ members to serve in parlia-  
 “ ment, shall continue more  
 “ than fifteen days at most  
 “ (*Sundays* excepted); and  
 “ if such poll shall continue  
 “ until the fifteenth day, then  
 “ the same shall be finally  
 “ closed, at or before the  
 “ hour of three in the after-  
 “ noon of the same day; and  
 “ the returning officer or offi-  
 “ cers at every such election  
 “ shall, immediately, or on  
 “ the day next after the final  
 “ close of the poll, truly,  
 “ fairly, and publicly declare  
 “ the name or names of the  
 “ person or persons who  
 “ have the majority of votes  
 “ on such poll, and shall  
 “ forthwith make a return  
 “ of such person or persons,  
 “ unless the returning officer  
 “ or officers, upon a scrutiny  
 “ being demanded by any  
 “ candidate, or any two or  
 “ more electors, shall deem  
 “ it necessary to grant the  
 “ same; in which case, it  
 “ shall and may be lawful  
 “ for him so to do, and to  
 “ proceed thereupon, but so  
 “ as that in all cases of a  
 “ general election, every re-  
 “ turning officer or officers  
 “ having the return of a writ,  
 “ shall cause a return of a  
 “ member or members to be  
 “ filed in the crown office, on  
 “ or before the day on which  
 “ such writ is returnable;  
 “ and every other returning  
 “ officer or officers, acting  
 “ under a precept or man-  
 “ date, shall make a return  
 “ of a member or members,  
 “ in obedience to such pre-  
 “ cept or mandate at least  
 “ six days before the day of  
 “ the return of the writ, by  
 “ virtue of which such elec-  
 “ tion has been made; and  
 “ so that in case of any elec-  
 “ tion, upon a writ issued  
 “ during a session or proro-  
 “ gation of parliament, and  
 “ a scrutiny being granted as  
 “ aforesaid, then that a return  
 “ of a member or members  
 “ shall be made within thirty



thus appointed by law, the returning officer proceeds to open the poll.

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(As to the commencement of the adjourned poll at Newport, see post)

The passage in *Whitelocke*, in which he says, that if the demanders of the poll do afterwards waive it, yet the sheriff must proceed in the scrutiny, (using that term for poll), can only be upon the supposition, that if those who make the demand do not pursue it, yet that some others do. *Ante*, 573. (n).

It seems therefore that a returning officer if, upon his attending at the proper place, in proper time, no electors come forward, may, after a reasonable interval, treat the demand of a poll as a nullity, and make the return forthwith.

And this proposition seems to be warranted by what passed in the following case.

*Westminster*, 26th June, 1661. Sir *Phillip* 3 Journ. 230.  
*Warwick*, and sir *Richard Everard*, were declared burgesses, upon the view, by the bailiff: after demand of the poll on the behalf of sir

“days after the close of the “same can conveniently be  
“poll, (or sooner, if the “done).”

If, after demand of poll, no electors come forward within a reasonable time, returning officer may then make the return forthwith.



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*Thomas Clarges*; sir *William Playter* and sir *William Polteney* (a) appointed five clerks to take the poll, and staid above an hour to take it; and none came to pursue it. Sir *Phillip Warwick* and sir *Richard Everard* were returned, and were, by the committee, and by the house, holden duly elected.

London, when  
poll to begin.

App. lx. ante,  
623.

With respect to elections for *London*. An enactment had been made, regulating the commencement of the poll, by the stat. 11 Geo. 1. c. 18. § 4, which is similar to that above stated in the 25 Geo. 3. The latter act has an exception by § 9 (b), which would make it questionable whether the case of any such election is within its operation.

## 2. Of the continuance of the poll:

It was not unusual formerly, first to elect

(a) It does not appear in what capacity sir *W. Playter*, and sir *W. Polteney*, stood.

(b) The stat. 25 Geo. 3. c. 84. (*For the title, see ante, 533.*)

§ 9. " Provided always,  
" and be it enacted, That no-  
" thing in this act before  
" contained shall extend to,  
" or in any wise affect, alter,  
" or regulate the mode or  
" time of proceeding at any

" election of any member  
" or members for any place  
" where particular regula-  
" tions, touching the dura-  
" tion of polls and scrutinies,  
" are specially enacted by sta-  
" tute, but that every such  
" election shall be begun and  
" carried on in the same man-  
" ner as if this act had not  
" been made."

See *London*, 1804, post,  
631. n.



one member, and then to adjourn the election of a second to a future day (*a*), there being originally no restriction upon such adjournments.

The statute law has now prescribed certain rules with regard to adjournments, not only touching the place, according to what has been already noticed, but also with respect to time. The stat. 7 and 8 Will. 3. c. 25. § 5 (*b*), after prohibiting adjournments in the case of elections for knights of shires, to any other town or place, except by consent of candidates, forbade any unnecessary adjournments in the same place, directing that the poll should be proceeded in from day to day, and time to time, without any further or other adjournment, except by such consent (*c*). *Ante, 522, 523.*

Since which the stat. 25 Geo. 3. c. 84. § 1, (*d*). Poll to be pre-

(*a*) See *ante*, 574, n. (*a*). See also the notes to the *Bristol* case, 1 Doug. 287, where lord *Glenbervie* says, "I do not know of any thing to hinder the election of two members being made the one after the other at this day."

(*b*) For this clause, see *ante*, 519.

(*c*) In the interval between the statutes 7 and 8 W. 3. c. 25, and 25 Geo. 3. c. 84, there were complaints of unwar-

ranted adjournments, in some cases, as in those of *Cambridgeshire*, 4th February, 1697, 12 Journ. 84, and of *London*, 5th March, 1713, 17 Journ. 488, wherein there were questions of this sort amongst others. Into these, however, it is not necessary to enter, the law being expressly laid down by the stat. 25 Geo. 3. c. 84.

(*d*) See this clause, *ante*, 623.



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ceeded in from  
day to day  
until finished.

which applies generally as before observed, to *all elections*, after directing when the poll shall commence, enacts, that it shall be duly and regularly proceeded in, from day to day, (*Sundays excepted*), until it be finished.

*Ante*, 523.

Adjournment  
of poll for  
county of  
Southampton,  
to be when all  
freeholders  
present at  
Winchester  
have polled.

Adjourned  
poll to com-  
mence in four  
days after  
close of origi-  
nal poll.

With respect to elections for the county of *Southampton* :—It has been shewn that, under the stat. 7 and 8 Will. 3. c. 25. § 10, there may be an adjournment of the poll to *Newport*, in the *Isle of Wight*, from *Winchester*; which adjournment is thereby directed to be after every freeholder present at the latter place is polled. And by the stat. 25 Geo. 3. c. 84. § 16 (*a*), the adjourned poll at *Newport* is to commence within four days from the close of the poll at *Winchester*.

(*a*) The stat. 25 Geo. 3. c. 84. (*For the title, see ante*, 533.)

§ 16. “ Provided always,  
“ That notwithstanding any  
“ thing in this act contained,  
“ it shall and may be lawful  
“ for the sheriff of the county  
“ of *Southampton*, and he is  
“ hereby required, after any  
“ poll for the said county  
“ shall have closed at *Win-*  
“ *chester*, and which shall al-  
“ ways be closed within the

“ space of fifteen days at the  
“ most, in the manner above  
“ required, to adjourn the  
“ poll to *Newport* in the *Isle*  
“ of *Wight*, in case the same  
“ shall be required by one or  
“ more of the candidates; so  
“ that every such adjourned  
“ poll shall commence within  
“ four days from the close of  
“ the poll at *Winchester*, and  
“ shall not continue longer  
“ than three days at the  
“ most.”



3. With respect to the hours during which the poll is to be kept open :

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The stat. 25 Geo. 3. c. 84. by § 3 (a), in order that electors may have full time and opportunity to poll, directs, that all returning officers, unless prevented by unavoidable accident, shall, during the continuance of the poll, on every day subsequent to the commencement of the same, cause it to be kept open for seven hours at the least in each day, and this is to be between the hours of eight in the morning and eight at night.

At all elections  
poll to be kept  
open seven  
hours at least,  
every day sub-  
sequent to  
commence-  
ment.

(a) The stat. 25 Geo. 3. c. 84. (*For the title, see ante, 533.*)

§ 3. "And, in order that electors may have full time and opportunity to poll,"  
"Be it enacted, that all and every returning officer and officers, unless prevented by any unavoidable accident, shall, during the continuance of the poll, on every day subsequent to the commencement of the same, cause the said poll to be kept open for seven hours at the least in each day, between the hours of eight in the morning and eight at night."

"returning officer or officers,  
"who shall preside at any  
"election of a member or  
"members to serve in parlia-  
"ment for any county, city,  
"borough, or place, shall  
"wilfully offend against, or  
"act contrary to the true  
"intent and meaning of this  
"act, every such person shall  
"be liable to be prosecuted,  
"by information or indictment in his majesty's court  
"of king's bench, or at any  
"court of oyer and terminer,  
"great sessions, or gaol de-  
"livery, for the county, city,  
"town, or place, where such  
"offence shall be committed,  
"in which no *noli prosequi*  
"or *cesset processus* shall be  
"granted; any law, custom,  
"or usage to the contrary  
"notwithstanding."

§ 13. "And be it enacted, that if any sheriff, or other

§ 15.



## Sect. 1.

*Ante*, 586.

It has been seen that the effect of a non-compliance with the directions of the above statute of the 25 Geo. 3, will not avoid an election, but at the same time that the conduct of any returning officer, acting contrary to the letter of the law therein, is highly unjustifiable.

1 Peck. 503.  
506, 507. S. C.  
*ante*, 586.

Where poll was adjourned before it had been kept open seven hours, it was resolved that such adjournment was highly improper; but the election was not avoided thereby.

In the case of *Colchester*, 1789, before cited, it appeared, that at half past two o'clock on the second day of the poll, upon some altercation taking place, with respect to a person who offered himself to vote, and was objected to as a pauper, the mayor adjourned the poll; and that on the third day he adjourned the poll, after it had been open one hour only, and held a court for the admission of freemen.

The committee, although they did not consider the election to be void, resolved, "That the adjournment of the poll on the second day of the election, no sufficient cause appearing to make such adjournment necessary at the time, and in the circumstances attending thereon, was highly improper, and contrary to law."

§ 15. " Provided always,  
" and be it further enacted,  
" that every indictment, in-  
" formation, or action, for any  
" offence against this act,  
" shall be found, filed, or  
" commenced within one year

" after commission of the  
" fact on which such indict-  
" ment, information, or action  
" shall be grounded, or with-  
" in six months after the con-  
" clusion of any proceedings  
" in the house of commons,  
" relating to such election."



They further resolved, "That on the third day of the poll, another adjournment took place, which was also highly improper, and contrary to law." (a)

SECTION 2. *Of the administration of oaths to electors; what oaths may be required of electors in general; of electors at the different elections; and of electors at particular places.*

1. OF the administration of oaths to electors:

In considering the proceedings at the poll, it becomes material to examine what oaths the electors may be required to take in order to their polling. But, before entering thereupon, it is proper to premise, that none other than what are by law expressly required, ought, under any circumstances, to be administered.

(a) *London, 1804.* It was proposed, on the part of the petitioner, to prove, that the returning officers had continued the poll open only six hours, instead of seven, as required by the stat. 25 Geo. 3. c. 84, § 3. It was denied, on the part of the sitting member, that that statute applied to elections for the city of *London*, upon the ground that they were exclusively subject to the regulations of the stat. 11 Geo. 1. c. 18. The fact in question not having been stated as matter of complaint in the petition, the committee refused to admit evidence to establish it, consequently there was no decision upon the point. 2 Peck. 271.



## Sect. 2.

Glanv. 104.  
106. 109.  
1 Journ. 708.

Administra-  
tion of oaths  
not expressly  
required by  
law, illegal

*Cirencester*, 21st May, 1624. An oath was administered to every elector, to declare whether he was a freeholder before his voice was admitted. It was resolved, that the administering an oath to the freeholders in a borough, was an unlawful act, for that "such an oath is only to be given in the county court by the statute, in case of choosing knights for the shire, and not in case of choosing burgesses within a borough." (a)

Glanv. 109.

But election  
not thereby  
avoided.

It was however resolved, "That the swearing of the freeholders, and polling of them, however the same might reflect upon the under sheriff, or others, in point of misdemeanor; yet the same did not, nor could, make void the election of sir *William Masters*, (whose election was in question), if otherwise he had a substantial and good election;" and he was holden duly elected.

9 Journ. 684.

Administra-  
tion of oath  
not warranted  
by law, re-  
solved to be a  
misdemeanor,  
and persons  
administering  
the same or-  
dered into cus-  
tody.

*Bristol*, 20th December, and 8th January, 1680. It being reported to the house, that the mayor and sheriffs at the election, imposed an oath upon the electors, before they came to give

(a) See also *Yorkshire*, 4th and 5th July, 1625, 1 Journ. 801. 803, 804, and *Dorsetshire*, 11th February, 1625, in each of which the admini-  
stration of oaths not expressly enacted by law at elections, was deemed an unwarrantable act. 1 Journ. 818.



their voices, in these words, "You shall swear  
 " that you are a freeman, and that you have  
 " not given your voice already;" they were  
 ordered to be sent for, in custody, to answer at  
 the bar of the house, for the misdemeanors by  
 them committed at such election (a).

It is also further to be observed, that the  
 persons, whom the law appoints to administer  
 oaths, are bound to perform that office, and  
 that any refusal so to do, will be resented and  
 punished by the house of commons (b).

*Westminster*, 16th, December, 1708. It ap-  
 peared that the high bailiff refused to administer  
 the oath of abjuration. The house resolved,  
 that he had, "in defiance of the law, arbitrarily  
 and illegally refused to tender the oath of ab-

16 Journ. 49.

Persons whose  
 duty to admin-  
 ister oaths re-  
 fusing so to  
 do, resolved to  
 be guilty of a  
 misdemeanor,  
 and committed  
 to custody.

(a) In this case information  
 was afterwards given to the  
 house, that the above persons  
 had absconded, and that there-  
 fore the above order of the  
 house could not be put in  
 execution against them: it  
 was thereupon ordered, that  
 an humble application should  
 be made to his majesty, to  
 issue out his proclamation for  
 the apprehending them, in  
 case they should not render  
 themselves to the serjeant by  
 a certain day therein to be  
 limited; but any further pro-  
 ceedings were prevented by a

prorogation and dissolution.  
 9 Journ. 702, 703.

(b) *Cardiganshire*, 18th Ja-  
 nuary, 1709. There was  
 some evidence that the sheriff,  
 when required to administer  
 the abjuration oath, having  
 said, that he knew no law  
 that enjoined him so to do,  
 and that when the act of  
 parliament was shewn to him  
 he said he would consider of  
 it. But this seems to have  
 been confined to one instance.  
 The house came to no resolu-  
 tion upon the sheriff's conduct  
 in this particular.

16 Journ. 267, 268.



## Sect. 3.

juramentum, when required so to do, and thereby that he was guilty of a high crime and misdemeanor." Ordered, that he should be committed to Newgate.

Inaccuracy in the administration of oaths.

*Ante*, 426. 430, 431.

How far a material irregularity in the administration of an oath required by law to electors, would affect the validity of an election, does not appear by any decided cases. Those of *Glasgow*, &c. 1807, *Wick*, &c. 1807, and *Linlithgow*, &c. 1807, before stated, establish, that if an oath, administered to electors, be substantially accurate, an election will not be avoided from a mistake in the form.

But it is to be observed, that in those cases the electors took the oaths under the impression of their being the legal oaths which they purported to be (*a*).

2. What oaths may be required of electors in general :

(See the provision as to Moravians, which applies generally to all oaths, *post*

Of the oaths and affirmations which may be required, some are general, and apply at all elections ; others are, in some degree, particular, being applicable only at elections for knights of shires, or at other elections, but not at both ;

(*a*) See the case of *Harwich*, 1803, *post*,



others again are applicable only at elections for certain places.

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Of those which are general, the oaths of allegiance and supremacy, or if the party be a quaker, the declaration of fidelity, may be required by virtue of the stat. 7 and 8 Will. 3. c. 27. § 19 (a), that clause enacting that no person who shall refuse to take the oaths in question, which are therein designated as those directed to be taken by the stat. of the 1 W. and M. c. 8, or, being a quaker, shall refuse to subscribe the declaration of fidelity in the stat.

Oaths of allegiance and supremacy, or of quakers declaration of fidelity, may be required of all electors.

No person to vote, who refuses to take the same, on requisition by a candidate.

(a) The stat. 7 & 8 W. 3. c. 27. "An act for the better security of his majesty's royal person and government."

§ 19. "And be it further enacted, by the authority aforesaid, that no person who shall refuse to take the oaths, directed by an act made in the first year of the reign of his present majesty, and the late queen Mary, intituled, *An act for abrogating of the oaths of supremacy and allegiance, and appointing other oaths,* or, being quakers shall refuse to subscribe the declaration of fidelity, directed by one other act of parliament, made in the

"said first year of the reign of his present majesty and the late queen, intituled, *An act for exempting their majesties protestant subjects dissenting from the church of England, from the penalties of certain laws,* (which oaths and subscription respectively the sheriff or chief officer taking the poll at any election of members to serve in parliament, at the request of any one of the candidates, are hereby impowered and required to administer) shall be admitted to give any vote for the election of any knight of the shire, citizen, burgess, or baron of the cinque ports, to serve in parliament."



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1 W. and M. c. 18, shall be admitted to vote at any election of a member to serve in parliament.

*Ante*, 598, *et seq.*

By whom to be administered.

These oaths, and the declaration, are only to be taken, if required, by a candidate, and are to be administered by the sheriff, or chief officer taking the poll, or they may be administered by the commissioners, where such are appointed.

Form of oaths.

The form of the oaths of allegiance and supremacy has been altered since the statute of William, and they are now taken according to that of the 1 Geo. 1. stat. 2. c. 13. § 1 (*a*).

Form of declaration of fidelity.

The declaration of fidelity, directed by the above stat. of 7 and 8 Will. 3. c. 27. § 19, to be taken by quakers, has also been altered by the stat. 8 Geo. 1. c. 6. § 1 (*b*), which directs, that

(*a*) See the oaths *Appendix* xxv. xxvi. The stat. 1 Geo. 1. stat. 2. c. 13, gives new oaths of allegiance and supremacy; it does not however in terms, give them as substituted for the former ones. In practice the oaths given by the stat. 1 Geo. 1, are taken; but in the application of that practice to the requisition of the stat. 7 & 8 W. 3. c. 27, it is to be observed, that the provision of

the statute of W. 3, being in some degree penal (inasmuch as the non-compliance with that statute is attended with the loss of the voter's franchise) that a construction penally adopting the substituted oaths, is not quite consonant to the rule of law, that penal statutes are to be construed strictly.

(*b*) The stat. 8 Geo. 1. c. 6. § 1. "*An act for granting the people called quakers,*



in all cases where such persons were or should be required or permitted to make and subscribe the declaration of fidelity in the form prescribed

“ *such forms of affirmation or declaration, as may remove the difficulties which many of them lie under.*”

“ Whereas, for giving some ease to scrupulous consciences, an act was made in the first year of the reign of their late majesties king *William* and queen *Mary*, intituled, *An act for exempting their majesties protestant subjects, dissenting from the church of England, from penalties of certain laws*, whereby (among other things) a declaration of fidelity, in the form therein expressed, is appointed to be made and subscribed by certain persons, dissenters from the church of *England*, who scruple the taking of any oath : And whereas, an act was made in the seventh and eighth years of the reign of his said late majesty king *William* the third, intituled, *An act that the solemn affirmation and declaration of the people called quakers, shall be accepted instead of an oath, in the usual form*, under the provisions therein mentioned, which act being at first temporary, was afterwards farther continued by an act made in the thir-

teenth and fourteenth years of the reign of his said majesty, and the same act is made perpetual, by an act made in the first year of his present majesty's reign, by which last mentioned act, a form, importing the effect of the abjuration oath, is prescribed to be taken by the said people called quakers ; and whereas, the inconvenience to the said people called quakers, and their families, and to others requiring their testimony, in many cases are not sufficiently avoided, by reason of difficulties among the said quakers, relating to the forms of the declaration, affirmation, and abjuration, before mentioned, as the same are now prescribed : And whereas, it is evident, that the said people called quakers, have not abused the liberty and indulgence allowed to them by law, and they have given testimony of their fidelity and affection to his majesty, and the settlement of the crown in the protestant line, and it is reasonable to give them farther ease and relief :” “ May it therefore please your most excellent majesty, that it may



## Sect. 2.

by the statute of Will. 3, should, instead thereof, make and subscribe that which was then given.

Abjuration  
oath; no per-  
son refusing to  
take, or, if a  
quaker, to de-  
clare to the ef-  
fect thereof, to  
vote.

(See post

The abjuration oath may also be required of electors, by virtue of the statute 6 Ann. c. 23. § 13 (a), enacting, that any person refusing to take the same, or, being a quaker, refusing to declare the effect thereof, upon his solemn affirmation, (in manner required by the 7 and 8 Will. 3. c. 34) (b), shall not be capable of giving

“ be enacted, and be it enact-  
“ ed by the king’s most excel-  
“ lent majesty, by and with  
“ the advice and consent of  
“ the lords spiritual and tem-  
“ poral, and commons, in  
“ this present parliament as-  
“ sembled, and by the autho-  
“ rity of the same, that in  
“ all cases, where by law, any  
“ quaker is or shall be re-  
“ quired or permitted to make  
“ and subscribe the declara-  
“ tion of fidelity in the form  
“ prescribed by the said first  
“ mentioned act, or to make  
“ the solemn affirmation or  
“ declaration in the form pre-  
“ scribed by the said act of  
“ the seventh and eighth  
“ years of the reign of his  
“ said late majesty king *Wil-*  
“ *liam* the third, or to take  
“ the effect of the abjuration  
“ oath in the form prescribed  
“ by the said act of the first  
“ year of his present ma-  
“ jesty’s reign, every such

“ quaker shall, instead of  
“ such first mentioned decla-  
“ ration of fidelity, make and  
“ subscribe a declaration of  
“ fidelity in the following  
“ words,” viz. (*For the decla-*  
“ *ration, see App. xxvi.*)

“ And instead of the form  
“ prescribed by the said act  
“ of the first year of his pre-  
“ sent majesty’s reign, for the  
“ effect of the abjuration  
“ oath, every such quaker  
“ shall take the effect thereof  
“ in the following words,” viz.  
“ (*For the declaration or af-*  
“ *firmation, see App. xxviii.*)

(a) For this statute, see  
*App. cxxxiv.*

(b) The stat. 7 & 8 W. 3.  
c. 34. “ *An act that the so-*  
“ *lemn affirmation and decla-*  
“ *ration of the people called*  
“ *quakers shall be accepted,*  
“ *instead of an oath in the*  
“ *usual form.*”

§ 1 Whereof enacts, every



any vote for the election of a member to serve in parliament.

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That statute empowers and requires the sheriff, or other chief officer taking the poll, to administer the same. This oath, or affirmation, may also be administered by commissioners.

By whom to be administered.

(See ante, 598.)

As between a requisition to take this oath, or affirmation, and those before spoken of, there is this difference, namely, that the others are to be taken at the request of a candidate; but the taking the abjuration oath may be received either by any candidate, or *other person present* at the election.

The abjuration oath, in the statute of the 6 Ann. would not now be applicable.

The abjuration oath may be required of electors, by a candidate, or any person present at the election.

quaker " who shall be required upon any lawful occasion to take an oath in any case, where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in the words therein," (but which have been altered by the stat. 8 Geo. 1. c. 6. § 1, to " I, A. B. do solemnly, sincerely, and truly declare and affirm."

By § 2, such affirmation or declaration is to be of the same force as an oath.

§ 3 Makes persons falsely affirming subject to the penalties of perjury.

§ 6 Confines the operation of the act to civil cases.

This statute, which was to be in force for seven years, was further continued by the 13 W. 3. c. 4, and made perpetual by the 8 Geo. 1. c. 6.



## Sect. 2.

Form of the  
oath.

(For the oath.  
see App. xxvii.)

The stat. 1 Geo. 1. stat. 2. c. 13. § 1 and 27, gave a new form, for which the stat. 6 Geo. 3. c. 53. § 1 (a), has again substituted another, which latter is now taken.

(a) The stat. 6 Geo. 3. c. 53. “ *An act for altering the*  
“ *oath of abjuration and the*  
“ *assurance; and for amend-*  
“ *ing so much of an act of the*  
“ *seventh year of her late ma-*  
“ *jesty queen Anne, intituled,*  
“ *An act for the improvement*  
“ *of the union of the two king-*  
“ *doms, as, after the time*  
“ *therein limited, requires the*  
“ *delivery of certain lists and*  
“ *copies therein mentioned, to*  
“ *persons indicted of high trea-*  
“ *son, or misprision of trea-*  
“ *son.*”

“ Whereas, by an act passed  
“ in the first year of the reign  
“ of his late majesty king  
“ George the first, intituled,  
“ *An act for the further*  
“ *security of his majesty's*  
“ *person and government, and*  
“ *the succession of the crown,*  
“ *in the heirs of the late*  
“ *princess Sophia, being pro-*  
“ *testants, and for extin-*  
“ *guishing the hopes of the*  
“ *pretended prince of Wales,*  
“ *and his open and secret*  
“ *abettors; it is, amongst*  
“ other things, enacted, that  
“ all and every person and  
“ persons therein mentioned,  
“ within Great Britain, and  
“ the several islands of Jersey  
“ and Guernsey, should take  
“ and subscribe the oath of  
“ abjuration therein men-

“ tioned; and all and every  
“ person and persons therein  
“ mentioned within Scotland,  
“ should also subscribe the  
“ assurance therein men-  
“ tioned; in the manner, at  
“ the times and places, and  
“ under the pains and penal-  
“ ties, in the said act ex-  
“ pressed: And whereas, by  
“ an act passed in the fifth  
“ year of the reign of his  
“ said late majesty, intituled,  
“ *An act for making more*  
“ *effectual the laws appointing*  
“ *the oaths for security of the*  
“ *government, to be taken by*  
“ *the ministers and preachers*  
“ *in churches and meeting-*  
“ *houses in Scotland, it is*  
“ enacted, that all and every  
“ person and persons therein  
“ mentioned, in Scotland,  
“ should subscribe the assu-  
“ rance in the above men-  
“ tioned act contained, and  
“ also take and subscribe the  
“ oath of abjuration therein  
“ directed to be taken, in lieu  
“ of the oath of abjuration  
“ formerly required by law,  
“ in the manner, at the times  
“ and places, and under the  
“ penalties and disabilities,  
“ in the said act provided:  
“ And whereas, by the death  
“ of the person who pre-  
“ tended to be prince of Wales  
“ during the life of the late



With respect to the declaration by quakers, instead of the oath of abjuration, the stat. 1 Geo. 1. stat. 2. c. 6. § 3, reciting, that disputes had arisen concerning the abjuration oath, to be taken by quakers, upon their solemn affirmation, as directed by the stat. 6 Ann. c. 23, enacted, that in all cases where the effect of such oath might be legally tendered or required of them, they should take it in the form therein given.

Sect. 2.

Form of the  
declaration.

“ king *James*, and since his  
 “ decease, pretended to be,  
 “ and took upon himself the  
 “ stile and title of king of  
 “ *England*, by the name of  
 “ *James* the third, or of  
 “ *Scotland* by the name of  
 “ *James* the eighth, or the  
 “ stile and title of king of  
 “ *Great Britain*, it is become  
 “ necessary to make some  
 “ alteration in the oath of  
 “ abjuration, and the assur-  
 “ ance, contained in the said  
 “ acts above mentioned:” “ Be  
 “ it therefore declared and  
 “ enacted, by the king’s most  
 “ excellent majesty, by and  
 “ with the advice and consent  
 “ of the lords spiritual and  
 “ temporal, and commons,  
 “ in this present parliament  
 “ assembled, and by the au-  
 “ thority of the same, that  
 “ from and after the fourth

“ day of June, one thousand  
 “ seven hundred and sixty-  
 “ six, the oath of abjuration  
 “ in the said act above men-  
 “ tioned, be administered in  
 “ such manner and form as  
 “ herein after set down and  
 “ prescribed.”—(*For the oath,*  
*see App. xxviii.*)

Mr. serjeant *Heywood*, Co. El. 440, notices a provision in the stat. 10 Geo. 1. c. 4, enacting, that when a jew should present himself to take the oath of abjuration in pursuance of that act, the words *on the true faith of a christian* were to be omitted. That provision however seems confined to the administration of the abjuration oath, upon the particular occasions contemplated by that act, which do not appear to include elections.



## Sect. 2.

(For the declaration, see App. xxviii.)

Moravian may affirm in all civil cases where an oath by law is required.

For which form that which is now in use was substituted by the stat. 8 Geo. 1. c. 6. § 1 (a).

With respect to Moravians, the stat. 22 Geo. 2. c. 30. § 1 (b), has enacted, that such persons, being required, upon any lawful occasion, to take an oath, in any case where by law an oath is or shall be required, shall, instead of the usual form, be permitted to affirm according to the directions of that act.

App. xiii.

Bribery oath;

Another general oath, or affirmation, is that of the 2 Geo. 2. c. 24, that statute, by § 1,

(a) The declaration has undergone no alteration since the death of the pretender, wherefore it is now in some respects very inapplicable.

(b) The stat. 22 Geo. 2. c. 30. "*An act for encouraging the people known by the name of Unitas Fratrum; or, United Brethren, to settle in his majesty's colonies of America.*"

§ 1 Whereof enacts, "that every person being a member of the said protestant episcopal church, known by the name of *Unitas Fratrum*; or, the *United Brethren*, and which church was formerly settled in *Moravia* and *Bohemia*, and are now in *Prussia*, *Poland*, *Silesia*, *Lusatia*, *Germany*, the *United Provinces*, and also

"in his majesty's dominions, who shall be required upon any lawful occasion to take an oath in any case, where by law an oath is or shall be required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in these words following:—

"I, *A. B.* do declare, in the presence of Almighty God, the witness of the truth of what I say," and such affirmation is declared to be of the same force as an oath.

By § 2, falsely affirming is made subject to the penalties of perjury.

By § 3, the act is not to qualify *Moravians* to give evidence in criminal cases.



Sect. 2.



enacts, that at every election, every person having, or claiming to have, a right to vote, shall, before he is admitted to poll, take the oath therein, or affirm, if a quaker, in case the same shall be demanded by either of the candidates, or any two of the electors.

may be required by a candidate, or any two electors.

That statute empowers, and under a penalty of £50, requires the officer or officers presiding, or taking the poll, to administer the same, and enacts, that no person shall be admitted to poll till he has taken and repeated the said oath in a public manner, in case the same shall be demanded, before the returning officer, or such others as shall be legally deputed by him.

No person to poll, not taking such oath, &c. if required.

This oath, or affirmation, can only be administered by the persons just mentioned, it having been explained, that the power of the commissioners does not extend to the oath in question.

By whom to be administered.

*Ante*, 601, *et seq.*

An elector, called upon to take the bribery oath, and at first declining, may nevertheless afterwards take it, and it ought to be administered to him; the oath being taken under the penalties of perjury, if it be false, by § 5, of the act.

Bribery oath, &c. taken falsely, perjury. *App.* xvi.

*Gloucestershire, 1777. William Ball re-*



## Sect. 2.

Gloucestershire case, page 80. Elector first refusing the bribery oath, but afterwards tendering himself to take it, ought to be permitted so to do.

fused to take the bribery oath the first time he went to the poll, and afterwards tendering himself to take the oath, was rejected. It was argued, that having once refused to take the oath, he could not afterwards be admitted; but the committee resolved, *nem. con.* "That the voter might be permitted to take the oath and vote any time during the poll." (a)

3. What oaths may be required of electors at the different elections:

Sheriff may examine electors upon oath, as to qualification.

With respect to electors of knights of shires:—As far back as the stat. of the 8 Hen. 6. c. 7 (b), an oath might be required of such electors; that statute empowering sheriffs of the realm of *England*, "to examine, upon the Evangelists, every such chooser, how much he may expend by the year." Under this statute it is in the discretion of the sheriff, whether he will examine the elector upon oath or not (c).

(a) *Southampton*, 2d April, 1735, 22d Journ. 447. Evidence was produced that the mayor had refused the vote of one *Nesole*, because he was deaf, and could not repeat the bribery oath in *English*, though a gentleman, who spoke to him in *French*, declared that he was willing to take the oath in *French*.—There is no express decision in the case upon this point,

but Mr. serjeant *Heywood*, Co. El. 446, seems to consider that the vote ought not to have been refused.

(b) For this statute, see *App.* dxxvi.

(c) *Monmouthshire*, 7th July, 1625. A question was made whether a sheriff may make deputies to take the oath, but nothing was said upon it. 1 Journ. 806.



But the 7 and 8 Will. 3. c. 25. § 3 (a), introduced an oath with respect to the qualification for voting, which was to be taken by every freeholder, if required by the candidates, or any of them.

Sect. 2.  
Freeholders  
oath, as first  
introduced:

By this oath, he was to swear, that he was a freeholder to the yearly value of 40s. specifying where his freehold lay, and that he had not polled before at the then election.

This oath was repealed by the stat. 10 Ann. c. 23. § 3 (b), which substituted another, to be taken upon the requisition of the candidates, or any of them, or any other person having a right to vote at the election. This oath was similar to the above, with this addition, that the freeholder was to swear, that the estate had not been granted to him fraudulently, on purpose to qualify him to vote, and he was also to swear to the place of his abode. And the same statute by § 8, enacts, that quakers, declaring to the effect of such oath upon their solemn affirmation, according to the stat. 7 and 8 Will. 3. c. 34, shall be admitted to vote (c).

The oath  
which was re-  
quired under  
the stat. 10  
Ann.

Quakers to af-  
firm.

(For Moravians,  
see ante, 642.)

(a) For this clause, see during the continuance of the  
*ante*, 518. stat. 7 & 8 W. 3, c. 34, which

(b) For this clause, see was at first only a temporary  
*App. dxxxiii.* act. It is now perpetual, see

(c) This was to be only *ante*, 639, n.



## Sect. 2.

Freeholders  
oath now  
taken.

The freeholders oath was again altered by the stat. 18 Geo. 2. c. 18. § 1, which enacts, that at every election for any knight or knights of the shire in *England* and *Wales*, every freeholder, instead of the oath, or affirmation, prescribed to be taken by the statute last above mentioned, before he is admitted to poll, shall, (*if required by the candidates, or any of them, or any other person having a right to vote at such election,*) first take the oath, or, being one of the people called quakers, the solemn affirmation in that act.

(For the oath,  
see App. xxx.)

This oath being shaped according to the progress of the law, embraces the substance of that in the statute of Anne; but the voter, in addition to what was before required of him, swears to having been in possession of his freehold twelve months, (or its being one of the excepted cases, wherein such possession is unnecessary,) and he also swears to his being of age.

By whom to be  
administered.

Ante, 601.

This oath or affirmation is thereby to be administered by the sheriff, his under-sheriff, or sworn clerk or clerks, appointed for taking the poll, who are required so to do. Or it may now be administered by commissioners.

The same clause imposes the penalties of per-



jury, and subornation of perjury, upon persons falsely swearing, or affirming, or suborning others so to do.

Sect. 2.

Persons falsely taking oath, or suborning, &c. liable to penalties of perjury, &c.

At places in England, being counties: oath or affirmation for persons demanding to vote in respect of freeholds of 40s. *per annum*,

With respect to electors demanding to vote at elections for places, being counties, in respect of freeholds of 40s. a year:—The stat. 19 Geo. 2. c. 28. § 1 (*a*), reciting that of the 18 Geo. 2. c. 18, and the expediency of making the like provisions for the due election of members for such cities and towns in *England* as are counties of themselves, and in which persons have a right to vote, in respect of freehold lands, tenements, or hereditaments of the yearly value of 40s. enacts, that every person demanding to vote at such election, in respect of any freehold estate of 40s. a year shall, *if required by the candidates, or any of them, or any person having a right to vote at such election*, first take the oath, (or, if a quaker, the affirmation,) in that act, the sheriff or sheriffs, under-sheriff or under-sheriffs, sworn clerk or clerks, appointed for taking the poll, being required to administer the same. If commissioners be appointed, this oath may be administered by them. The same clause imposes the penalties of perjury, and subornation of perjury, as in the case of the other freeholders oath.

to be taken, if required, by a candidate or an elector.

(*Moravians, see ante, 642.*)

By whom to be administered.

*Ante, 601.*

(*a*) For this clause, see *App. dlii.*



## Sect. 2.

Electors at elections, other than for knights of shires, or of members for places being counties, or where particular oaths are given,

With respect to electors at places where none other than the bribery oath, the oaths of allegiance, supremacy, and abjuration, were before appointed:—The stat. 25 Geo. 3. c. 84(a), which applies to all electors, except those of the two descriptions just mentioned, and those at some few places about to be enumerated, where the law has appointed particular oaths, contemplating, that although a positive oath of qualification cannot be required from such electors, yet

(a) The stat. 25 Geo. 3. c. 84. (*For the title, see ante, 533.*)

§ 5. “ And whereas, although from the various and disputed rights of voting in several cities, boroughs, and other places, a positive oath of qualification cannot be required from the electors, yet it is apprehended that unqualified persons may be deterred from polling at such elections under fictitious names or otherwise, by requiring from electors previously to their polling, the oath or affirmation hereinafter mentioned;” “ Be it therefore further enacted, that from and after the first day of August, one thousand seven hundred and eighty-five, upon every election to be made, within that part of Great Britain called England, or Wales, or town of

*Berwick-upon-Tweed*, of any member or members to serve in parliament, in all cases where no oath or affirmation of qualification, other than the oaths or affirmations against bribery, or of allegiance, supremacy, and abjuration, can now by law be required, every person claiming to give his vote at the said election, shall, (if required by any candidate, or any person having a right to vote at such election,) before he is admitted to poll, take the oath, (or, being one of the people called quakers, make the solemn affirmation) following.”—(*For the oath, see App. xxxii.*) “ Which oath or solemn affirmation, the returning officer or officers at such election, and his or their deputies and poll clerks, is or are hereby authorized and required to administer.”



that unqualified persons may be deterred from polling by the requisition of the oath therein enacts, that upon any election in *England, Wales, or Berwick upon Tweed*, in all cases where none other than the general oaths before mentioned, could by law be required, every person claiming to give his vote, shall, *if required by any candidate, or any person having a right to vote at such election*, take the oath, or, if a quaker, make the affirmation therein, which the returning officer or officers, their deputies and poll clerks, are empowered to administer; as are also the commissioners under the statutes before mentioned.

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Post.

may be required by a candidate or elector to take the oath or affirmation herein.

(*Moravians, see ante, 642.*)

(*For the oath, see App. xxxii.*)

By whom to be administered.

(*Ante, 601.*)

By § 8, persons falsely swearing or affirming, or suborning others so to do, are made liable to the penalties of perjury and subornation of perjury.

Penalty of perjury, &c. on persons falsely swearing, &c.

§ 8. “ And be it further  
 “ enacted, that if any person,  
 “ in taking any oath or af-  
 “ firmation herein-before ap-  
 “ pointed or authorized to be  
 “ taken before any returning  
 “ officer or officers, shall  
 “ thereby commit wilful per-  
 “ jury, and be thereof con-  
 “ victed; or if any person  
 “ shall unlawfully and cor-  
 “ ruptly procure or suborn  
 “ any other person to take  
 “ any such oath or affirma-  
 “ tion, whereby he or she shall  
 “ commit such wilful perjury,  
 “ and shall be thereof con-  
 “ victed, he or she so offend-  
 “ ing shall incur such pains  
 “ and penalties as are inflict-  
 “ ed in and by two acts of  
 “ parliament, the one made  
 “ in the fifth year of the reign  
 “ of the late queen *Elizabeth*,  
 “ intituled, *An act for punish-*  
 “ *ment of such person as shall*  
 “ *procure or commit any wil-*  
 “ *ful perjury*; the other made  
 “ in the second year of his  
 “ late majesty king *George* the



## Sect. 2.

1 Peck. 390.

392.

Where a voter inserted in the oath more places of residence than one, it was holden that he might so take it.

*Harwich*, 1803. A question arose upon the administration of this oath, colonel *Chaytor* objected to take the oath, unless he were permitted to fill up the blank for the place of abode, with two places of abode, and he tendered an oath, in writing, to this effect, "Place  
" of my abode at *Durham*, and also in *West*  
" *Street*, in the borough of *Harwich*." The mayor told him, that he could not alter the form of the oath, and that if he did not take the same oath which the other voters had taken, his vote could not be received. He persisted in his refusal, and was rejected. This validity of the vote being afterwards discussed (*a*), upon the trial of Mr. *Adams's* petition, was determined to be good.

"second, intituled, *An act*  
" *for the more effectual pre-*  
" *venting and further punish-*  
" *ment of forgery, perjury,*  
" *and subornation of perjury;*  
" *and to make it felony to steal*  
" *bonds, notes, or other securi-*  
" *ties for payment of money,*  
" *for any perjury or suborn-*  
" *ation of perjury, contrary*  
" *to the said acts.*"

(For § 9, whereby the act does not extend to places having particular regulations, see ante, 626.)

(*a*) On one side it was contended, that the oath could not be modified by the return-

ing officer, according to the conscience of those who were to take it, but that the words of the statute being in the singular number "place of abode," the blank could only be filled up with one residence. On the other side it was said, that the oath being merely of description, and not of qualification, the residence which, by the particular constitution of the borough of *Harwich*, gives the right of voting there, was not at all affected by, nor had any connexion with, the oath prescribed by the statute 25 Geo.



4. As to the oaths required of electors at particular places :

The acts which regulate the elections at the following places, have enacted, that particular oaths should be taken at such elections respectively. In some cases they are positively required to be taken ; in others only if required. The statutes whereupon such provisions depend, being set forth in the Appendix, it will be sufficient to point out in each instance whereupon the law depends.

*London* :—The stat. 11 Geo. 1. c. 18. § 1, 2, 3, London, App. lvii. requires a particular oath to be taken by every elector, also the abjuration oath if required.

*Norwich* :—The stat. 3 Geo. 2. c. 8, re- Norwich, App. lxvi. quires the oath therein to be taken by every elector.

*New Shoreham* :—The stat. 11 Geo. 3. c. 55. New Shoreham, App. lxx. § 4, gives an oath to be taken by every freeholder if required, as therein.

3. c. 84, and therefore, that colonel *Chaytor*, if he pleased, might have given in *Durham* only, as his residence. That the object of the statute was to facilitate an inquiry, after the election, into a voter's

title, and to detect frauds ; which object was assisted by the voter giving in all the places in which he resided, if he had more places of residence than one.



Sect. 2.

Coventry,  
App. lxxvi.

*Coventry* :—The stat. 21 Geo. 3. c. 54. § 7, gives an oath to be taken by electors if required.

Cricklade,  
App. lxxxii.

*Cricklade* :—The stat. 22 Geo. 3. c. 31. § 4, gives an oath to be taken by freeholders if required, as therein.

Aylesbury,  
App. lxxxvi.

*Aylesbury* :—The stat. 44 Geo. 3. c. 60. § 3, gives an oath to be taken by freeholders if required.

These acts respectively direct by whom the oaths are in each case to be administered, and make it perjury to swear falsely.

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SECTION 3. *According to what right of voting votes are to be received on the poll, where, by what description, and in what manner votes shall be given; and of the tender of votes.*

IT will be seen hereafter, when treating of qualifications and disqualifications of electors, that there are an infinite variety of considerations which ought to decide the return, in admitting or rejecting votes. At present, we have only to observe, that the right of election,



under which the returning officer is to act, and by which he is to govern himself, is that which is laid down by the statutes 2 Geo. 2. c. 24. § 4, and 28 Geo. 3. c. 52. § 25, 26, 27, and 31.

Sect. 3.

App. xvi.  
ccccxxxiv.  
ccccxxxvii.

By these statutes such votes are to be deemed to be legal, which have been so declared by the last determination in the house of commons, unless the right of election shall have been reported upon by a select committee under the latter act; in which case, the right of election, as reported upon by them, is to be the rule.

Under what  
right of elec-  
tion returning  
officer to act  
in receiving  
votes.

## 2. As to where votes are to be given :

At elections for knights of shires :—The stat. 18 Geo. 2. c. 18 (*a*), after directing that in the cases before mentioned, a certain number of booths or polling places shall be erected, and that lists of the divisions for which they are allotted, shall be affixed thereupon; by § 8,

County elec-  
tions.

*Ante*, 543.

(*a*) The stat. 18 Geo. 2. c. 18. (*For the title of the act, see ante*, 532.)

§ 3. “ And be it further  
“ enacted, by the authority  
“ aforesaid, that no sheriff,  
“ under-sheriff, or clerk, ap-  
“ pointed to take the poll at any  
“ of the said booths or polling  
“ places, shall admit any per-

“ son to vote for any lands,  
“ tenements, or other freehold  
“ estate, sworn by the said  
“ oath to be lying and being at  
“ some parish, town, or place,  
“ or parishes, towns, or places,  
“ which parish, town, or place,  
“ or parishes, towns, or places,  
“ or any of them, or any part  
“ of them, is not, or are not,  
“ mentioned in the list so



## Sect. 3.

Persons not to be admitted to poll, except at the booth, in the list whereof his freehold is,

unless it be not mentioned in any list.

forbids the sheriff, under-sheriff, or clerk, appointed to take the poll at any such booths or polling places, to admit any person to vote for any lands, tenements, or other freehold estate, sworn by the oath of the voter to be lying and being at a parish, town, or place, or parishes, towns, or places (*a*), not mentioned in the list made for such booth or polling place, unless the situation of such lands, tenements, or estate, is in some town, liberty, or place, not mentioned in any of the lists made out for all the booths or polling places.

Voter ought to vote at the proper booth.

The above provision is directory to the officer taking the poll, and he is answerable for the observance of it. With regard to the elector, it is material for him to poll at the proper booth, inasmuch as if his vote from accident, or other circumstance, be not put upon the poll; if it appear that he applied at a wrong booth, that of itself will be a decisive objection to the allowance of such vote by a

“made out for such booths  
“or polling places as aforesaid, unless such lands, tenements, or estate, lie or be  
“in some town, liberty, or place, not mentioned in any  
“of the lists so made out for  
“all the said booths or polling places as aforesaid.”

(*a*) Although the stat. 51

Geo. 3. c. 126, relating to elections at *Westminster*, directs a list of the parishes, districts, or divisions, into which the booth is to be allotted, it does not impose any obligation upon the electors to vote at places allotted for particular divisions. *App.* lxxxviii.



committee, although it be in other respects unquestionable. Sect. 3.

*Bedfordshire*, 1785. The rev. *Decimus Reynolds* went to the booth for the hundred of *Flitt*, and was sworn there, and declared his vote, for a freehold in the hundred of *Willey*, he also possessing a freehold in the hundred of *Flitt*, of which he said nothing at the poll; there was no entry of his vote upon the poll book, or in either of the cheque books. It appeared, that after voting (as he thought) he was told to go to the *Willey* booth, but did not go, thinking his vote had been properly taken down in that of *Flitt*; the committee decided, that it should not be added. 2 Lud. 420.

If, however, the person taking the poll, contrary to his duty receive the vote, the franchise will not be lost by being given at a wrong booth. This was laid down in the case of *Gloucestershire*, with respect to the vote of *Benjamin Pierce*; and was acted upon, after deliberate argument, in the *Middlesex* case, 1804, in respect to the vote of *John Baker*. Vote received at the wrong booth will not be therefore bad.  
Gloucestershire, 120.  
2 Peck. 59.

3. Under what description votes are to be given :

At elections for knights of shires; the vote



## Seet. 3.

Effect of insufficient description of vote on the poll.

*Ante*, 583.

*Ante*, 583. 585, and *App.* xxii, xxiii.

must be accurately described according to those particulars which were enumerated when treating of the duty of poll clerks. There is no statutory mandate upon an elector to furnish this description, unless he be called upon to take the freeholders oath. But in such oath, as well as in the duty which the poll clerks are sworn to perform, the legislature has evidently contemplated that such description ought to be given.

This doctrine has been fully acted upon by committees, insomuch, that where the description has been insufficient, they have disallowed the vote.

Gloucestershire, 93.

The *Gloucestershire* committee determined, that a defective description was a *prima facie* objection (*a*), sufficient to put the petitioner on proving the necessary qualifications.

2 Peck. 52.

The *Middlesex* committee, 1804, resolved generally, "That when the particulars of the

(*a*) *Cricklade*, 1785. The committee resolved, "That the parties were bound to give evidence only in support of the titles of those voters which had been impeached; or whose declarations of the rights under which they claim-

ed to vote, had been falsified; or who had refused, at the poll, to give an account of the title under which they claimed a right of voting." 2 Lud. 350, and see the arguments there, 339, *et seq.*



description on the poll did not appear to comply with the forms prescribed, the committee would decide on the validity of such description; and that unless the description required under the different heads on the poll book appeared complete, the vote should be rejected."

As to the sufficiency of description under each head, there can be no general rule, but it may be of use to see what has been decided, in order to judge from thence what degree of nicety would probably be insisted upon (a).

With respect to the name; it was formerly said in the *Yorkshire* case, 17th April, 1628, that "if an elector or freeholder being, by the sheriff upon the poll, demanded his name, shall refuse it, he is not disabled to be an elector." But the taking down the name is so evidently

Voter's name,  
1 Journ. 834,

(a) It is a very material question, how far the sheriff is justified in refusing the franchises of persons who decline to answer in these particulars, he having no general power to examine them beyond that which is given (and which is vested in the sheriff alone) by the statute 8 Hen. 6, c. 7, which power respects inquiry as to the value

of the freehold only. But it should seem, that under the doctrine holden by the *Gloucestershire*, *Middlesex*, and *Cricklade* committees, that if an elector refuse to give the information necessary, in order to the making the proper entry on the poll, his vote may be rejected. These decisions being in unison, it is to be presumed they would be acted upon.



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contemplated in the stat. 10 Ann. c. 23. § 5 (a), with respect to the poll, that it cannot be doubted, that a correct description therein is necessary.

Description of  
voter's place of  
abode,

With respect to the place of abode, it is essential that this should be correctly given :

2 Peck. 53.  
none given.

*Middlesex*, 1804. *Peter Holford*, the voter, described himself "master in chancery," without adding any place of his abode; the committee held this description defective, and the vote bad.

2 Peck. 56.

Voter carrying  
on his trade at  
one place and  
sleeping at  
another,

In the same case, as to the vote of *J. W. Vaughan*, who had entered his residence "*Princes-street*," it appeared that he carried on his business in "*Princes-street*," but that he slept in *Orange-court*, where his freehold was, and where another person lived as a lodger; the committee decided the vote to be bad (b).

In the instance of rectors of parishes, the

(a) See this act, App. dxxxiii.

(b) *Middlesex*, 1804. *James Jenkins* had given in his residence "*London*;" it was suggested that this was too general, but no such objection having been taken to the votes on the other side, the

committee determined that they would not take that subject into consideration, unless where the vote was specifically objected to, upon that ground, in the list, which was not the case in the vote in question, 2 Peck. 53.



name of the parish, was, in the same case, holden sufficient, without any further description, either to freehold or residence. Thus the vote of an elector, described as follows: rev. *T. Farmer, residence* “rector of *St. Luke's*,” was holden good, as well as in several others similarly circumstanced.

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Cases where no such entry required.

2 Peck. 54.

With respect to the nature of the freehold: It is to be described, “whether messuage, land, rent, tithe, or what else.” *Buckinghamshire*, 1785. *John Creaker*, was objected to as voting for a freehold of less than forty shillings value, he described it on the poll as “land.” His freehold consisted of a house, with a yard annexed to it, appurtenant to the house, used by him as a carpenter's yard. The yard alone was worth twenty shillings, but both together more than forty shillings a year; the committee, by their resolution, allowed the inquiry into the value of the house, in order to make out the qualification of the voter.

Description of nature of freehold.

2 Lud. 603.

But see *Barfoot's* vote, *post*, 660.

*Meade* described his freehold as a “tenement.” The committee resolved to take the description in its more familiar sense as a house, and held the description sufficient.

2 Peck. 55.

Tenement.

*Edward Taylor* described his freehold as *Ib.*

“part of a messuage;” it appeared that he

Part of messuage.



Sect. 3.

was a joint tenant, and the vote was declared good.

2 Peck. 59.

Land, freehold,  
consisting also  
of buildings.

*John Barfoot* described his freehold as "land," the premises consisting of a stable and cart-shed, with no more land adjoining, than a very small slip, not above six feet broad. The committee were of opinion, that the freehold was improperly described as land, and determined the vote to be bad.

2 Peck. 59.

S. C.

Land.

*William Clappeson* described his freehold, "houses and land," situation, "*St. George's in the East*." (This description was defective, for the houses.) As to the land, it was proved to consist merely of two small gardens, appertaining to the houses; the committee determined the vote to be bad.

2 Lud. 502.

Annuity.

*Bedfordshire, 1785. John Hill*, voted in right of an annuity of £20, devised to him out of lands charged with it. The annuity was paid him by the tenant by direction of the trustee for the annuity. He described his freehold as "house and land." His vote was holden bad (a).

(a) This was not the only objection made to this, or to the following vote of *Daniel Palmer*.



*Daniel Palmer's* vote was holden bad under similar circumstances (a).

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S. C. 2 Lud.  
504.

*Middlesex*, 1804. *Thomas Foster*, described his freehold as "rent," and voted for a share in *Fulham Bridge*. The vote was holden good.

2 Peck. 60.

Bridge share.

*William Bennett* gave in his freehold "fee farm rent." It appeared in fact to be a rent-charge, granted to the voter for life, and had been duly registered. The vote was holden good.

S.C. 2 Peck. 60.

Fee farm rent.

*Middlesex*, 1804. *John Meadowcroft's* freehold was entered "*Exigenter* of the common pleas," in the column describing the situation of the freehold, leaving blanks for the nature of the freehold, and name of occupier. It was holden sufficient.

2 Peck. 54.

Where entry of  
place of free-  
hold not neces-  
sary.

In the same case, *Joseph Jefferson's* vote, the

*Ibid.* 53.

(a) *Bedfordshire*, 1785. *John Gilbert* was objected to principally, as not having a freehold of 40s.; he described it at the poll, as consisting of "houses" in the occupation of himself and others. It was assessed "*John Gilbert*" (landlord) "himself" (tenant).—Evidence was offered that the house in which he lived was not worth 40s. a year, and it

was concluded, that his vote must be rejected, the freehold for which he voted being either not assessed or under value.

The principle was admitted, but the fact as to value failing, the objection was not persisted in. 2 Lud. 447.

The objection principally insisted on was the misdescription.



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description of the nature of the freehold being “preferment in the church,” was holden sufficient (a).

The whole of what is meant to be insisted upon as the qualification for the vote had better be described. It has been holden that the freeholder cannot call in aid, any freehold not given in at the poll, if that prove not of sufficient value. It will be observed, however, that there is some inconsistency in the decisions hereupon.

2 Lud. 444.

*Bedfordshire*, 1785. The committee rejected the vote of *William Odell*, who voted for a tenement which was let for £1. 11s. 6d. a year, he having also a tenement near the same, which let for £3 a year, making at the same time a general resolution, “that if a voter gives in a freehold on the poll which is not worth 40s. a year, the vote is to be considered as a bad one, notwithstanding he may be possessed of other freeholds amounting to more than 40s.” This, however, was not acted upon in the vote of *Timothy Kidman* in the same case.

3 Lud. 446.

The freehold was given in as “house and land in the occupation of *John Osborn*.” This did not amount to 40s. But the voter’s

(a) The parish was inserted.



freehold consisted of two tenements under one roof, one let to *Osborn*, and the other to *Cope*, both together paying £3. 8s. There was only one door in front of the house, for the entrance of both families; but there were separate staircases and gardens, and in every other respect they were separate dwellings. *Cope*, at the same time, had a separate back-door into the yard. The vote was holden good; as was that of one *Perkins*, under the same circumstances, who <sup>2 Lud. 447.</sup> had described his freehold as "houses."

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The voter must describe in whose occupation his freehold is:—The *Gloucestershire* committee resolved, "That a freeholder not having specified the name of his tenant at the time of the poll, is a *prima facie* objection to his vote."

*Ante*, 583.  
Occupation to  
be described.  
*Gloucester-*  
*shire*, 93.

And the *Middlesex* committee, 1804, acted upon the same principle. The general resolution before mentioned was made by them upon the discussion of the necessity of describing the occupier at the poll. <sup>*Ante*, 656.</sup>

In that case, *Thomas Mapleson* had caused "unknown" to be inserted in the column of occupiers. His vote was determined to be bad. <sup>2 Peck. 53. 55.  
Occupier "un-  
known," bad.</sup>



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S. C. 2 Peck.  
55.

So, *William Shepherd's* vote, who had given in his occupier, "No. 3 and 4." was rejected.

2 Peck. 56.  
S. C.  
No occupier  
stated, bad.

As to the vote of *George Whytock*; in the column of occupiers there was a blank. It was suggested, the defect might be owing to the remissness of the poll-clerk. The committee, however, were of opinion that it was a fatal defect.

S. C. 2 Peck.  
56.  
Exception.

*Rev. G. Harpur* described the nature of his freehold, "rectorship." No occupier was inserted: (the parish was inserted). The committee held the description sufficient.

S. C. 2 Peck.  
63.  
Under repair  
taken to be in  
voter's occupa-  
tion.

*John Fisher.* The entry in the occupiers' column was "under repair." The committee held this sufficient, taking it to mean, that the premises were in the voter's own occupation.

S. C. 2 Peck. 61.  
Wrong surname  
of occupier,  
bad.

*Daniel Wiltshire* described his occupier "*Charles Osborne.*" This was said to be a mistake for *John Oyston*. *John Oyston* being examined, said, that he had paid rent to the voter for nine years, and that no person of the name of *Osborne* lived in the same street with himself. The committee decided the vote to be bad (a).

(a) *John Merrington* de- Upon objection of, no free-  
scribed the occupier, "self." hold in the occupation of the



*Charles Stable* described his occupier, "*John Harding*." The name was in fact, *Thomas Harding*. This had not been made a ground of objection; but being disclosed upon another inquiry, the committee determined the vote to be bad.

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S. C. 2. Peck.

61.

Wrong christian name of occupier, bad.

*Robert Lloyd* voted for premises in *Golden-lane*, in the occupation of "*Hooker* and others." His freehold consisted of two houses, one situated in *Golden-lane*, the other in *Hand-court*, with a yard between them. *Hooker*, whom he named as the occupier, occupied that in *Hand-court* only. There were separate assessments for *Hand-court*, and *Golden-lane*. The committee determined the vote to be bad.

S. C. 2 Peck.

62.

Occupier of other premises belonging to voter given in, vote bad.

*Robert Henry Sparks* described his occupiers as "*Gale* and *Webb*." These were the persons to whom the voter had demised; it appeared that no person was in the actual occupation at the time of the election. It did not appear that there was any under-lessee, or any person in the occupation of the freehold, dif-

S. C. 2 Peck.

61. Persons to whom voter had demised, described as occupiers, though no one actually in occupation, sufficient.

tenant named on the poll, the assessment was produced in support of such objection, in which the name of *John Gray* was entered as the tenant.

The committee held this to be no evidence that the voter had given in a wrong occupier.—*Middlesex*, 1804. 2. Peck. 63.



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ferent from those stated by the voter. The committee determined the vote to be good (a).

S. C. 2 Peck.  
61. Occupier  
named; house  
empty; no  
evidence of his  
being lessee,  
bad.

*Robert Kentish.* The entry of the occupier was "*Evans*;" the house was empty at the time of the election; no evidence was given of *Evans* being a lessee. The committee determined the vote to be bad.

(a)\* In several instances, where the voter had given in the name of a former occupier, and it was proved that another person was, in fact, the occupier, at the time of the election, the vote was disallowed, 2 Peck. 61.

The committee also determined, in several instances, that where a voter gave in his original lessee, and it appeared that the lessee had underlet the premises to others, the description was defective, and the vote bad. Where it appeared, however, that the premises were only let to *weekly* tenants, it was determined, that such persons need not be given in as occupiers; and it was held sufficient to state the original lessee, or the voter's self, (if there had been no other letting), as the occupier. This was determined in the case of *Thomas Moore Fosket*: but in the case of ——— *Longuet*, who gave in as his occupiers, certain persons who held the premises of him by the *month*, it was objected, that he

should have given in himself as the occupier, conformably to the principle of the above determination; but it was resolved, that the description was sufficient.

Many cases occurred, where the name of the occupier, on the poll, was not exactly the right name of the actual occupier, but bore a greater, or a less resemblance to it. The question upon these occasions was, whether the variance was such as was likely to have happened from the mistake of the poll-clerk, in taking down the real name of the occupier, as it was stated to him by the voter, or from the voter naming a different person. In doubtful cases, evidence was frequently given, against the vote, to shew that persons of the name, which appeared on the poll, had formerly lived in the premises, or in the neighbourhood, or were otherwise connected with the voter, and in support of the vote, that these circumstances did not exist, 2 Peck. 62.



*Bedfordshire, 1785. George Martin* voted for a freehold at *Eaton Socon*, in the occupation of *Shefford*, and others: on the assessment the occupier was *himself*. The objection was supported by evidence, that no person of the name of *Shefford* lived in *Eaton Socon*; that the voter, in discoursing of his vote after the election, had said, he had named a wrong tenant at the poll, as the one he had mentioned held an estate of him at *Keysoe*, and not at *Eaton*. It was contended, that though *Shefford* was not the tenant of the estate voted for, yet the addition of "and others," in describing it, would enable the party to support the vote, by shewing who the actual tenants were. The vote was holden good.

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2 Lud. 522.  
Occupiers described as S. "and others," S. not being, in fact, the occupier; holden, that, "and others," would permit the voter to shew the real occupier.

Vote good.

*Hayman Dyson* gave as occupier, "self." It appeared that the occupiers were, the voter, and *Charles Dyson*. Upon this occasion, it was agreed between the parties, and adopted as a rule by the committee, that where a voter, having two or more tenants, gives in the name of one of them only, it is sufficient (a).

S. C. 2 Peck. 61.

One occupier given in; where, in fact, there were more, sufficient.

(a) *Bedfordshire, 1785.*—*Thomas Love* voted for house and land in the occupation of *J. Cunnington*. This tenant occupied a house, and garden annexed to it, for which, and for the fruit of an orchard, he paid 32s. This was all he occupied; but there was a little field adjoining, belonging to the voter, occupied by another tenant, at the rent of 20s. This vote was allowed, 2



Sect. 3. The voter must describe where his freehold  
 27 Journ. 277. is situated:—*Oxfordshire*, 8th April, 1755.  
 The house refused evidence to shew, that a  
 voter had a freehold in a different hundred from  
 that, in which he had described it to be, at the  
 poll.

*Gloucester-*  
*shire*, 140.

The *Gloucestershire* committee held it to be  
 necessary for every freeholder, when he polls,  
 to give in the name of the parish, hamlet, town-  
 ship, tithing, or place in which his freehold  
 was situate (a).

2 Peck. 57.  
 Misdescrip-  
 tion of situa-  
 tion.

*Middlesex*, 1804. *John Nixon* gave in, as  
 the situation of his freehold, "*Collin's-court,*  
*Wapping.*" *Collins's-court* appeared to be in  
*Shadwell*. The committee declared the vote to  
 be bad.

2 Peck. 54.  
 What degree  
 of specification  
 of premises ne-  
 cessary.

*Middlesex*, 1804. *Richard Lloyd*, gave as  
 the situation of his freehold "*St. Giles.*" The  
 committee determined, that the name of the  
 parish, without a more particular local descrip-  
 tion, is not sufficient, within the metropolis.

*Lud.* 417, 418.; but the doc-  
 trine holden as to *Robert*  
*Lloyd's* vote, in the *Middlesex*  
 case, 1804, is of a contrary  
 import, *ante*, 665.

(a) They also further re-  
 solved, that the word "hun-

dred" should not be inserted  
 before the word "parish," on  
 account of the impossibility  
 of finding out any particular  
 freehold in large parishes.  
*Gloucestershire*, 140.



The committee were afterwards applied to on the part of the petitioner to rescind the resolution. This, however, they refused to do, but relaxed it, where the freehold consisted of land.

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Stating only a parish in metropolis insufficient.

*David Cadell* described his freehold, a house in the *Liberty of the Rolls*, which formed a small part of the parish of *St. Dunstan's*, containing about 350 houses. The committee held this description sufficient.

S. C. *ib.*

But a small liberty within a parish sufficient.

*John Cross* described his freehold to be in "*John-street, Sepulchre*," whereas it was in *St. John-street*, his vote was holden good.

2 Peck. 56.

*John Hitchens*. Situation of freehold, "*Greenfield-street, Whitechapel*." Part of the street is in *Whitechapel*, and part in *Mile End Old Town*. This property was in fact in the latter, but very near *Whitechapel*; it appeared that the whole street is more generally and popularly called *Greenfield-street, Whitechapel*; that the premises were assessed in *Mile End*; and that a mark was made in the street at the division between *Mile End* and *Whitechapel*. In support of the vote, it was contended, that the popular description was even better than the legal description. On the other side, it was said, that the legal description was necessary, in order to

2 Peck. 56.

Situation described by the popular name of the street, sufficient.



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satisfy the terms of the oath. The committee determined the vote to be good.

Same point.

*Mark Burr.* Situation of freehold, "*Uxbridge.*" *Uxbridge* is a township of the parish of *Hillingdon*, assessed separately to the land-tax, and the poor's-rate. Part of the principal street of *Uxbridge* runs into the township of *Hillingdon*; this part, when it is necessary to distinguish, is called *Hillingdon-end*; but, in common language, it is spoken of as part of *Uxbridge*. The premises, for which the voter had voted, were situated in this part of the township of *Hillingdon*; but the committee considered the description to be sufficient.

It seems, that if there be any inherent circumstance, calculated to create uncertainty in the description of the situation of the freehold, that ought to be guarded against in the statement. And the fact of the misdescription was not overlooked, although there was a great affinity to the truth, unless it be substantially correct.

2 Lud. 510.

Freehold partly in two counties, the occupier of that in the wrong county being given in, vote bad.

*Bedfordshire, 1785.* *Henry Belfield* voted for a freehold in his own occupation, "in the parish of *Studham*," which lies part in *Hertfordshire* and part in *Bedfordshire*, in both of which the voter had land. That which he oc-



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cupied *himself* lay in *Hertfordshire*, that in *Bedfordshire* was let: his vote was holden bad. As was also that of another voter, who voted under the same circumstances, who having land in *Caddington* parish, in the hundred of *Flitt*, lying in both counties, named the tenant who rented his land in *Hertfordshire*.

*Bedfordshire*, 1786. *Thomas Lane* voted for land in *Barton* parish. His freehold lay in the adjoining parish of *Higham Gobian*, and was assessed there. The voter's house was very near *Barton*; letters were directed to the tenant, who occupied it, at *Barton* turnpike; and his family went to *Barton* church. The vote was determined to be bad.

2 Lud. 416.  
Voter giving a wrong parish, insufficient, however near the parish given may be to the proper one.

The observations, with respect to the description by which votes shall be given, do not extend beyond the case of elections for shires, or of elections where the right of voting is of the same nature (a).

#### 4. In what manner votes shall be given:

In addition to what has been already stated, it only remains to observe as to the manner of giving the vote, that both the statute law and

Vote not to be given at twice.

(a) As the doctrine upon which committees have gone with respect to the poll-books at county elections seems to have been in a great measure founded upon the freeholder's oath, it should seem by analogy, that those at other

elections should, according to the oaths which may be required by the 25 Geo. 3. c. 84, contain the name, the addition, profession or trade, and the place of abode of the voter.



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App. xxx. to  
xxxii.

App. dxliv.

the law of parliament forbids an elector to divide his suffrage; however the practice of voting at twice may formerly have obtained, it cannot now be done. It is part of the oath of 40s. freeholders, as well as of the oath in the 25 Geo. 3. c. 84, that the voter "has not been polled before at that election." Moreover, in the case of elections of knights of shires, the stat. 18 Geo. 2. c. 18, by § 5, imposes a penalty of £40 upon a person voting more than once, to be forfeited to any candidate for whom such person shall not have voted.

If there were any doubt whether these statutes apply where a person having voted for one candidate only, afterwards votes for another, the language of the following resolution is at all events unequivocal, and as such has been acted upon, not only in county but in borough elections (a).

13 Journ. 90,  
91.

*Bedfordshire*, 21st December, 1699. It was resolved, upon such a question, "that if a person, having a right to vote for two members to serve in parliament, shall give a single vote,

(a) *Bridgewater*, 1803, *Samuel Tutton* intended to vote for *Agnew* and *Allen*, but on coming up in a tally of persons in Mr. *Allen's* interest, he was told he might vote for Mr. *Allen* then, and Mr. *Agnew* afterwards; upon which he voted for Mr. *Allen* only. After some little in-

terval, he offered his vote for Mr. *Agnew*; but the vote was rejected by the returning officer. And the committee decided that it was so rejected properly. 2 Peck. 109. For cases of votes given by mistake, or under a mistaken impression, see *post*, chap. 13. sect. 6.



such person hath not a right to come afterwards and give his second vote during the said election."

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And in the case of *Leicester*, 8th February, 15 Journ. 135. 1705, there was a resolution to the same effect (a).

### 5. Of the tender of votes:

The elector, after stating his name, and whatever is requisite for making the necessary entry, is to declare for whom he intends his vote, and this declaration should be made to the person taking the poll; it having been holden, in the *Gloucestershire* case, that a declaration made in the booth, but not to the poll-clerk, was insufficient.

Vote should be declared.

(*Ante*, 585, et seq. ante, 671, n.)

*Gloucestershire*, 32, 33, 34.

In offering the vote, a positive declaration, although proper as precluding all possibility of misunderstanding, is not in law so absolutely necessary, but that there may be a sufficient tender, if it appear beyond a doubt, for whom

Declaration in booth, but not to poll-clerk, an insufficient tender,

(a) The case of *Leicester* & 8 W. 3. c. 25, that act only did not fall within any argument to be raised from the 7

applying to county elections.



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the vote is intended, though it be not formally stated (a).

1 Peck. 381.  
396.

Tender collect-  
ed from cir-  
cumstances.

*Harwich*, 1803. At the election, the undisputed votes on each side were taken first, and afterwards those that were objected to, were offered alternately to the returning officer by the counsel in whose interest they were supposed to be. Three votes were offered, (viz. those of *Robinson*, *Chaytor*, and *Dean*); the counsel for Mr. *Adams*, the petitioner, offering such votes, and arguing in support of them; an entry was made on the poll of the tender of the votes of the two former, but not for whom they were

(a) *Southwark*, 1804. A voter (*Thomas Jackson*) presented himself, and demanded to vote for the petitioner, sir *Thomas Turton*. The returning officer had, by a paper written by the petitioner himself, given the following direction to the poll-clerk: "When  
" a voter comes up to poll,  
" he is to be asked his name  
" and place of abode, and  
" then whether his land-  
" lord pays his poor's-rates:  
" if he answers in the affirma-  
" tive, he is to be sent to the  
" hustings; the poll-clerk is  
" not to take his name down." The poll-clerk understanding from the voter in question that his landlord paid his rates, refused to take his vote, and told him to go round to the hustings. The petitioner's inspector, who stood close to the poll-clerk, asking the voter for whom he meant to vote, he answered, for sir *Thomas Turton*. This vote being offered subsequent to the delivery of the paper, and being of the description therein alluded to, the determination of the committee was, " that the petitioner, by his own conduct, had precluded himself from the advantage of any tender to the poll-clerks of farmed votes, made posterior to the delivery of the paper." 2 Peck. 149. 152. 154. 160.



tendered; the tender of the latter was not recorded. The committee added these votes to the poll.

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**SECTION 4.** *Of the manner of taking the poll; and of receiving votes with a query.*

1. AS to the manner of taking the poll:

The manner of taking the poll has been fully entered into, when treating of the duty of poll-clerks, and in the matter of the preceding section. It need hardly now be observed, that although, by the common law, there was no obligation upon the returning officer to take the poll in writing, yet the convenience of all parties evidently points out this as the best manner of taking it. By the statutes which relate to elections for knights of shires, the law clearly contemplates its being so taken; and it is established by practice, so fully, as will be seen in a subsequent part of this work, that select committees, in the trial of controverted elections, always exact

Poll to be in writing.



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the production of the poll-book as the first step in their proceedings (a).

2. Of receiving votes at the poll with a query;

Votes, when to  
be received  
with a query.

In taking the poll, it frequently happens that objections are made of a nature, to require more deliberate examination, than the hurry of the moment will admit, or that doubts are entertained, which may be removed on further inquiry. In such cases it is usual for the returning officer to receive the votes, subject to his ulterior determination, whether to admit, or to reject them.

2 Peck. 338.

This practice, (which seems also at one time to have been adopted with a view to parliamentary inquiry (b),) has been long recognized. There is a series of cases (c), for above a century past, down to the recent case of *Middlesex*, 1805, wherein this measure has been

(a) With respect to elections for the county of York, the 10 Ann. c. 23. §. 6, directs the sheriff to appoint seven convenient tables, according to the directions of this act; and § 7 makes a similar provision for elections for the county of Chester. *App. dxxxiv*

(b) *Southampton*, 17th March, 1695, 11 Journ. 518. *Cockermouth*, 6th March, 1710, 16 Journ. 537.

(c) See the cases collected, Heyw. Co. El. 501, *et seq.*



adopted. It seems doubtful, however, whether it be not requisite that the parties should consent.

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Doubtful, whether parties must not consent to votes being received with a query.  
33 Journ. 162.

The language of sir *Fletcher Norton*, as speaker, in reprimanding the returning officer of *New Shoreham*, 14th Feb. 1771, who had struck off the queried votes of one of the candidates, without discussion, is to that effect (a).

The authority of the returning officer, in this respect, is strictly confined to votes received upon the poll with a *query*, and these must be decided upon before declaring the majority (b).

*Denbighshire*, 14th Dec. 1741. The sheriff declared the numbers to be in favour of sir *Watkin Williams Wynne*, but refused to make the return till he had looked at his notes; and,

24 Journ. 18, 19. 89. 92, 93. Sheriff refusing to make a return till he had examined queried votes,

(a) He there says, "I have always been of opinion, (although I do not know, that the resolutions of the house have gone so far), that the practice of receiving votes with queries, by the mere authority of the returning officer, and without the consent of the parties, is illegal." He adds, "I am sure it is dangerous; for if once it be admitted by this house, that the returning officer has a right to receive votes, upon terms which are to subject them to

his future decision, after the poll is closed and the numbers known, it will always be in the power of that officer so to manage the queried votes, as to return which of the candidates he pleases, &c."

(b) In the *Bedfordshire* case, 1785, there was an adjournment of the county court at the close of the poll, for the purpose, among others, of discussing the queried votes, and to this proceeding no objection was made, 1 Lud. 352.



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and then striking off the votes privately, some of which were not queried, and returning the candidate for whom those struck off, were not given, his election was avoided.  
 24 Journ. 22.  
 98. 2 Peck.  
 377. 32 Journ.  
 26, 27. 55. 83.  
 89. 95. 103.  
 107. 361. 434.  
 2 Peck. 379.  
 Same point, and returning officer censured.

afterwards, having privately struck off a number of the votes given for sir *Watkin Williams Wynne*, some of which he had not *queried* at the poll, he returned Mr. *Myddleton*. The house, thereupon, resolved, that the former ought to have been returned.

To the same effect are the cases of *Colchester*, 15th Dec. 1741, and *Cumberland*, 15th Dec. 1768, and 6th and 24th April, 1769.

Moreover, in the latter case, and in that of *Denbighshire*, just mentioned, the conduct of the returning officers, in holding out an intention of having the *queried* votes discussed, but afterwards striking them off without such discussion, although the candidates were anxious for and prepared for it, was highly censured by the house.

24 Journ. 93,  
 94.

In that of *Denbighshire*, the house not only committed Mr. *Myddleton*, the sheriff, to Newgate, but addressed the crown to remove him from the office which he held of receiver-general of the land revenue in *North Wales*, and also from being a justice of the peace for the counties of *Denbigh* and *Flint*.

In that of *Cumberland*, they committed the sheriff to custody.



In the *Shoreham* case also, 17th Dec. 1770, the returning officer was, upon the same ground, severely reprimanded upon his knees, by the speaker.

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33 Journ. 69.

157. 162.

Same point.

In the *Middlesex* case, 1805, a question was made, whether votes received at the poll with a *query*, in order to future discussion, and the future discussion of which was promised by the sheriff, at the poll, but did not take place till after three o'clock on the fifteenth day, could be reckoned into the number on the poll, which was closed at that hour. The sheriff made the return according to the state of the poll, at the close thereof, without taking into consideration the queried votes, which were discussed in the interval between that time, and the time of declaring the numbers, which did not take place till the next day.

2 Peek. 338.

342. 345. 370.

Votes received with a query, and discussed after three o'clock on the 15th day of the poll, but before declaring the numbers, ought to be acted upon.

The committee held, that Mr. *Mainwaring*, who was returned under the above circumstances, was not duly returned; but that sir *Francis Burdett* ought to have been returned; the putting such votes upon the poll, giving him the majority.

Where votes have been received with a *query*, in the event of the parties afterwards neglect-

Queried votes where parties neglect afterwards to



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support them,  
may be struck  
off.

10 Journ. 520.

ing or refusing to make them good, the returning officer will be justified in striking them off.

*Wareham*, 22d Dec. 1690. There were queried votes on both sides, all of which were, for the above reason, struck off by the returning officer; the effect of which was, that Mr. *Okeden*, the candidate, who was admitting all the votes on both sides to be good, second upon the poll, but who had the majority of votes not queried, was returned, and he was holden duly elected.

1 Peck. 286.

Queried votes,  
being left un-  
decided on the  
poll, will not  
avoid an  
election.

The *Caermarthenshire* case, 1803, established that the circumstance of the returning officer leaving votes queried at the end of the poll, without deciding upon them, will not, of itself, avoid the election,

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SECTION 5. *Of the production of annuity registers, and land tax assessments.*

1. AS to production of annuity registers:

At elections  
for knights of  
shires, and for  
places, being

The law has laid down certain regulations, with respect to persons voting in right of an-



nuities and rent-charges, at elections, either of knights of shires, or of members for places, being counties, where the right of election is vested partly, or in the whole, in freeholders, in respect of freeholds, of the yearly value of forty shillings.

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counties, where  
right of elec-  
tion in 40s.  
freeholders,  
&c.

The stat. 3 Geo. 3. c. 24, requires that in such cases, memorials of the grant should be registered with the clerk of the peace of the county, riding, or division, or with the clerk of the peace, or other public officer of such city or town, having the custody of the records, within which respectively the lands, out of which the annuity or rent-charge arises, lie, and that certificates should be made, according to the directions of that act; and, unless this be done, no person is to vote at such elections, in respect of such annuity or rent-charge.

Provisions  
as voters in  
right of an-  
nuities or rent-  
charges.

The same act, in order to afford at such elections the readiest means of ascertaining the legality of votes, which depend upon an observance of the law in these particulars, by § 7, requires such clerks of the peace, town-clerks, or other officers, or their deputies, upon reasonable notice, to attend with the book or books of entries of the certificates and memorials under that act, upon the request of any candi-

Clerks of  
peace, &c. to  
attend with re-  
gisters of an-  
nuities, &c.  
on request and  
satisfaction.



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date or candidates, he or they making him reasonable satisfaction for such attendance (a).

2. As to the production of the land tax assessments :

County elections.  
Clerk of the peace to attend with duplicates of land-tax assessments, on request, &c. and satisfaction.

At elections for knights of shires :—The stat. 20 Geo. 3. c. 17, having required that duplicates of the land-tax assessments should be returned to the quarter sessions of the peace, has enacted by § 14, that the clerk of the peace of every county, riding, or division, in whose office such duplicates shall be filed, or his deputy, shall, upon reasonable notice, attend at the election with the original duplicates, at the request of any candidate, or the agent or agents of any candidates ; the person or persons requesting the same, making him a satisfaction for his attendance (b), at the rate therein (c).

(a) § 8 Imposes a penalty of £100 upon such persons disobeying that act, to be recovered as therein.

(b) Two guineas a day for each day's attendance at the election, together with one shilling and sixpence a mile for the costs and charges of his journey, from the place of his abode to and from the place of election.

(c) The same stat. by § 15, in such case also requires, that after the issuing the writ or precept for such election,

the clerk of the peace, or his deputy, should attend, *gratis*, from day to day, from the hour of nine in the forenoon to three in the afternoon, in each day, at the place where the records of the county, riding, or division, are usually kept, from the time of the delivery of such notice, to the day immediately preceding the day of election, for the purpose of receiving applications for the inspection of duplicates, and for making copies, according to the act.



The redemption of the land tax has operated so extensively, as very much to supersede the necessity of those provisions, which require the assessment of freeholds to the land tax, and it has, in consequence, been in agitation to do them away altogether (a). The above law,

(a) A bill, of which the following is a copy, was brought into the house of commons on the 12th March, 1818.—It was read twice, but was thrown out upon the third reading on the 4th of May :

A Bill “*for the Amendment of the Election Laws, so far as relates to the Land Tax Assessment.*”

“Whereas an act was passed in the twentieth year of the reign of his present majesty, intituled, ‘*An act to remove certain difficulties relative to voters at county elections;*’ whereby it is amongst other things enacted, That from and after the first day of January, one thousand seven hundred and eighty-one, no person shall vote for electing a knight of the shire to serve in parliament within that part of Great Britain called England, or the principality of Wales, in respect of any messuages, lands, or tenements, which have not for six calendar months next before such election been charged or assessed towards some aid granted or to be granted to his majesty, his heirs or successors, by a land

tax:—And whereas by an act passed in the nineteenth year of the reign of king George the second, and intituled ‘*An act for better regulating of elections of members to serve in parliament for such cities and towns in that part of Great Britain called England as are counties of themselves,*’ it is enacted, That no person shall vote for the electing a member for any city or town being a county of itself, in England, in respect of any freehold messuages, lands, or tenements, of the yearly value of forty shillings, which have not been assessed towards some aid granted to his majesty by a land tax twelve calendar months next before the election:—And whereas by an act passed in the forty-second year of the reign of his present majesty, intituled, ‘*An act for consolidating the provisions of the several acts passed for the redemption and sale of the land tax into one act, and for making further provision for the redemption and sale thereof, and for removing doubts respecting the right of persons claiming to vote at elections for knights of*



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however, still remains in force in this particular, coupled with the provision of the subsequent statute, 42 Geo. 3, c. 116, § 200, by which every

*the shire and other members to serve in parliament, in respect of messuages, lands or tenements, the land tax upon which shall have been redeemed or purchased,* it is amongst other things enacted, that every person who shall tender his vote at the election of any knight or knights of the shire, or other member or members to serve in parliament, within that part of Great Britain called *England*, or the principality of *Wales*, in respect of any messuages, lands or tenements, of the quality and value which would by law entitle him to vote at such election, the land tax charged whereon shall have been redeemed or purchased, shall, from and after the

be entitled to vote at any such election as aforesaid, without being compelled to shew that such messuages, lands or tenements have been assessed to the land tax, upon proving to the satisfaction of the returning officer, on oath, or otherwise, that such land tax hath at any time previously to such election been redeemed or purchased, and the said messuages, lands or tenements become exonerated therefrom:—And whereas it appears that more than one-

third of the whole of the land tax formerly charged upon messuages, lands and tenements, in *England* and *Wales*, hath already been redeemed and purchased:—And whereas great difficulty hath arisen at elections in distinguishing and proving, to the satisfaction of returning officers, as directed in the said last recited act, that messuages, lands and tenements are exonerated from the said land tax, and what remains still liable thereto; by means whereof much inconvenience and delay hath arisen;” May it therefore please your majesty, That it may be enacted; and be it enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That from and after so much of the said recited acts, or of any other acts, as prohibit any person from voting at any election of members to serve in parliament, in respect of any freehold messuages, lands or tenements, which have not been assessed towards some aid granted to his majesty by a land tax, shall be and the same is hereby repealed.”



person, tendering his vote at the election of any knight of the shire, or other member, in respect of any messuages, lands, or tenements, of the quality and value which would, by law, entitle him to vote at such election, the land tax charged whereon shall have been redeemed or purchased, is to be entitled to vote, without being compelled to shew an assessment to the land tax, upon proving, to the satisfaction of the returning officer, on oath, or otherwise, that such land tax hath previously to the election been redeemed or purchased, and that such messuages, lands, or tenements, have become exonerated therefrom, under the provisions of the acts for the redemption of the land tax.

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*App. dxcix.*  
Where land tax redeemed voter need not shew assessment to land tax.

On proving redemption to returning officer:

#### SECTION 6. *Scotland.*

FROM the different nature of elections in *Scotland*, the law has no provisions in respect of such elections, which correspond with the matter stated in this chapter, further than what has been already given.

*Ante, 615. 617.*



## Sect. 7.

SECTION 7. *Ireland (a).*

App. cccxiv.  
At all elec-  
tions:  
Poll when de-  
manded, to  
commence on  
the day of de-  
mand, or next  
day, unless  
Sunday, &c.

WITH respect to the commencement of the poll:—The stat. 57 Geo. 3, c. 131, by § 1, directs that every poll which shall be demanded at any election for a member or members to serve in parliament, for any county, city, borough, or other place in *Ireland*, shall commence on the day upon which the same shall be demanded, or upon the next day at farthest, (unless that be a *Sunday, Christmas-day, or Good Friday*, and then on the next day after.)

App. ccxxxix.  
At all elec-  
tions:

As to the continuance of the poll:—The *Irish* stat. 35 Geo. 3, c. 29, § 2, as to elections for knights of shires, forbade any adjournment, without consent of all the candidates, longer than from day

(a) By the *Irish* stat. 35 Geo. 3, c. 29, § 20, a restriction is imposed upon candidates in respect of their hired agents and hired clerks; no candidate for a county being allowed to employ for the election more than after the rate of one of each of such agents, or clerks for each barony or half barony, in the county; and this under a penalty of £1000, to be recovered as therein directed. And by the same clause no higher sum is to be paid to any such clerk or agent than five guineas for the first day, and two guineas for every

further day, during which the poll shall continue, and candidates offending therein, are made liable to the above penalty of £1000.—There is also a corresponding restriction with respect to *other elections*; as to the number of hired agents, or hired clerks, to be employed by candidates; no candidate being allowed to employ more than one of each for every hundred voters who polled at the last or any previous election, with the like limitation as to payment of such clerks, and penalty in case of offending therein.



to day, unless from a *Saturday* to a *Monday*. But the above clause of the 57 Geo. 3, c. 131, § 1, directs, that the poll, at all elections, shall be duly and regularly proceeded in from day to day (*Sundays, Christmas-day, and Good Friday* excepted) until the same be finished.

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App. cccxiv.  
Poll to be proceeded in from day to day.

In one case however the law sanctions, and indeed directs an adjournment; namely, where the election is interrupted by riots.—By the *Irish* stat. 35 G. 3, c. 29, § 12, if any person or persons shall violently, riotously, or outrageously disturb or interrupt any election, or the proceedings of the poll, such disturbance, riot, or misbehaviour, is as before-stated to be no excuse to the returning officer, or officers, nor to afford any pretence for closing the poll, or making a return; but the court is thereupon to be adjourned for some convenient time, as the occasion may require; and if necessary, further, from time to time, until such disturbance shall have ceased, when the returning officer is again to proceed in taking the poll.

App. cexlv.  
In case of riots poll may be adjourned.

Ante, 343.

With respect to the hours during which the poll is to be kept open, &c.:—By the *Irish* stat. 35 Geo. 3, c. 29, § 8;—every returning officer, unless prevented by accident, or unavoidable necessity, (an entry of which is to be made at large on the poll book, and signed by

App. cexlii.  
At all elections:  
Poll to be kept open seven hours a day, between eight and eight.



## Sect. 7.

*App* ccxlv.  
Returning  
officers to  
sum up num-  
bers each day,  
and to declare  
them, &c.  
*Ante*, 619.

him) is to cause the poll to be kept open in his own, and every deputy's court, for seven hours each day, between eight in the morning and eight at night, from the commencement of the election, until the close of the poll, unless the candidates consent to his doing otherwise, (in which case such consent is to be entered on his poll book).—And, by § 10, returning officers, are, upon the poll books being delivered to them by their deputies, as before stated, on each day to sum up the number of votes polled on that day for each candidate, which are to be read aloud, and entered in his poll-book in open court (a).

Declaration  
against tran-  
substantiation.

Abjuration  
oath.  
*App*. cciii.

With respect to the oaths required of electors : —The general oaths and declarations required of electors are, the declaration against transubstantiation, and the oath of abjuration. These are required by the *Irish* statute 2 Ann. c. 6, § 15, of all persons taking the benefit of that act as protestants. It seems, therefore, that all persons voting as such, and not as papists, ought to take these oaths.

(a) By the 57 Geo. 3, c. 131, § 13, upon notice in writing from the candidates or any of them, three days at least before any election, the returning officer or officers must provide booths or other proper places for administer-

ing the oaths, &c. to electors, so as to be ready for and against the day of election, the expence whereof is to be repaid by the candidates, in equal proportions. *App*. ccccxii.



The form of the declaration against transubstantiation, is that given in the stat. 30 Car. 2, stat. 2, c. 1 (a).

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Form of declaration.

The oath of abjuration depends upon the stat. 6 Geo. 3, c. 53, § 1 (b), which is by § 2 of that act directed to be taken in *Ireland*.

App. ccix.

Form of oath.

The bribery oath or affirmation, if required by a candidate or elector, is by the *Irish* stat. 35 Geo. 3, c. 29, § 60, to be taken by every voter before he is admitted to vote.

Bribery oath.

App. cclxxiv.

Where see the oath.

By the *Irish* stat. 37 Geo. 3, c. 47, § 18, if any candidate or elector shall desire it, every person offering to vote at any election is to take the oath therein, that he is twenty-one years of age.

Oath that elector is of age.

App. ccxcviii.

Where see the oath.

In the case of an elector voting a second time, in consequence of a candidate dying, the stat. 57 Geo. 3, c. 131, § 33, makes an alteration in the oaths or affirmations, as to the voter having polled before.

App. ccccxxxv.

Oath of persons voting a second time.

With respect to the oaths to be taken by papists:—The law has, from time to time, undergone many alterations. It now depends upon the stat. 51 Geo. 3, c. 77, § 3, by which any such person who will take and subscribe the oaths and

App. ccxcii.

What oaths papists to take in order to voting.

(a) For the declaration, xxvii.—See also the *Irish* stat. 21 22 Geo. 3, c. 48. App. see App. i.

(b) For the oath, see App. ccxxii.



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declarations in the *Irish* stat. 13 and 14 Geo. 3, c. 35, § 1 (a), and in the *Irish* stat. 33 Geo. 3, 21 (b), is to be entitled to vote.

The oaths which are to be taken by freeholders of different descriptions, are shaped upon a variety of circumstances, constituting their qualifications to vote; and will therefore be more properly considered when treating of such qualifications (c).

There are some provisions with regard to elections in *Ireland*, connected with this part of the subject, but which are not immediately analogous to any of those before mentioned as to elections in *England*.

*App. cccxxiv.*  
Clerk of the  
peace or de-  
puty to attend  
at elections  
with affidavits  
of registry of  
freeholds.

By the stat. 57 Geo. 3, c. 131, § 14, the clerk of the peace is required, during the whole of every election, to attend, or cause his deputy to attend, the returning officer or officers, in his or their booth, court, or building, where he or they shall preside; and to bring with him all the original affidavits of the registry of freeholds, and is, on demand of the returning officer or of-

(a) For this oath, see *App.* ccxxvi.

(b) For this oath, see *App.* ccxxii.

(c) As to the entries in the poll-books in *Ireland*, the *Irish* stat. 35 Geo. 3, c. 29, § 16, directs, that in all elections, where a person shall

vote as a freeholder, the returning officer is to enter in the poll book the place of his freehold, barony or baronies, or half barony or half baronies, wherein it lies, and his place of abode, and also *jurat* or *affirmat*, upon his being sworn, &c. *App.* ccxliv.



ficers, or his or their assessor, to produce such affidavits as may be required by him or them.

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By the stat. 57 Geo. 3, c. 131, § 20, every person, by due course of law, convicted of having polled a second time at the same election, except in the case in the act mentioned (alluding to that of a candidate dying), or of having personated any other person for the purpose of polling at an election, is to be adjudged guilty of felony, and transported or imprisoned, for any term not more than seven years, at the discretion of the judge or judges trying them.

*App. ccccxviii.*  
Polling twice,  
or personating  
others, for  
the purpose of  
polling, felony,  
&c.

The law has contemplated a contingency, which might be productive of considerable inconvenience, unless provided for, namely the death of a candidate. The stat. 57 Geo. 3, c. 131, § 32, recites, that it is expedient in the event of the death of any candidate during a poll, that persons who have given their votes for such candidate, should be enabled to vote over again; and enacts, that in all cases where it shall be made appear to the returning officer upon the oath of any credible witness, (which he is to administer, at any time before the final close of the poll), that any candidate for whom any votes have been given at such election shall have died, he shall cause public notice to be given, and shall direct the poll to be adjourned

*App. ccccxiv.*  
Candidate  
dying during  
poll; his voters  
may vote again  
for one candi-  
date for whom  
they shall not  
have voted be-  
fore.



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Poll, in such  
case, to be  
adjourned.

till the next day ; and in such case every elector who shall have voted for such deceased candidate is to be admitted, if he think fit, to vote over again. There is a proviso, that no person, who shall have so voted, shall vote again for more than one candidate, or vote for any candidate for whom he shall have before voted.

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## CHAPTER XII.

### OF CLOSING THE POLL, AND THE PROCEEDINGS THEREUPON.

SECTION 1. *Of the duration and close of the poll ; of the proclamations for closing the same ; and of the case of an equality of numbers.*

SECTION 2. *Of declaring the majority.*

SECTION 3. *Of scrutiny.*

SECTION 4. *Of the custody of the poll books, and giving copies thereof.*

SECTION 5. *Scotland.*

SECTION 6. *Ireland.*

No poll to continue beyond fifteen days.

**T**HE duration of the poll is limited by the stat. 25 Geo. 3. c. 84, § 1 (a), which enacts that no poll shall continue more than fifteen days at

(a) For this stat. see *ante*, 624.



most, *Sundays*' excepted.—This enactment applies both to county and to other elections.

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Subject to the above limitation of the statute law, the poll should be kept open till it is fairly to be presumed that all the electors, or, at least, all such as intend to poll, have given their votes.

As the electors are not compellable to give their suffrages at any particular time, or at all, it must necessarily be left to the discretion of the returning officer, regulated perhaps in some degree by custom, to determine what time he will allow, towards the end of the poll, for taking the remaining votes; and the due exercise of this discretion is, perhaps, one of the most anxious parts of his duty.

In general, when the electors, unpolled, are reduced to a small number, the returning officer gives notice, that, at an appointed hour, he will proceed to make the ordinary proclamations for the close of the poll.

When electors have nearly all polled, usual for returning officer to give notice, of making proclamations for closing the poll.

As this is a measure of great importance both to the candidates and to the electors; in taking this step, he must cautiously advert to the existing circumstances of the election; least by a premature close of the poll, he should work injustice on the one side, or by an unrea-

Returning officer, in closing poll, to be guided by existing circumstances.



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sonable protraction of it, he should occasion unnecessary trouble and expence on the other.

In coming to a decision upon this head, it will be material for the returning officer to look to the total number of electors, the time already given for the poll, and the probability of other voters coming in, adverting at the same time to the right of election, as to whether residence be or be not a necessary qualification; and, therefore, whether voters who are non-resident may be presumed to be coming from a distance. Nor is it less incumbent upon him, to consider whether there is any very strong ground for the inference, that those who are yet unpolled, have designedly kept back their votes, with a view to delay.

Each case must necessarily depend upon its own circumstances, and the question will always be whether the close of the poll, under all the facts, were or were not premature.

If it shall be decided so to have been, the election will be avoided.

This was the point in the case of *Rochester*, 1817.—Sir *T. B. Thompson* had vacated his seat by acceptance of an office. The new writ issued on the 12th of June, 1816. On the 15th of the same month, there was a meeting



at *Rochester*, of several electors, to consider of and propose the candidates. The notice of election was given on the same day.

The election commenced on the 20th. The bulk of the electors voted on the four first days of the poll; on the fifth and sixth days the poll was very slack, particularly on the latter, at one time of which day, the mayor sat between two and three hours without receiving a single vote.

The mayor, on the sixth day, declared, at the poll, that he intended to fix a time for closing the poll, but he did not then mention any time. He added, that he wished the candidates could agree of themselves, and that he hoped to receive a communication from them upon this head. On the part of Sir *T. B. Thompson*, the fixing a time for the close of the poll was strongly protested against, upon the ground that he expected several voters, in his interest, to come from a distance.

On the morning of the seventh day, the mayor declared that he should close the poll at five o'clock on that day. Sir *T. B. Thompson* protested as before, stating that he had ground to expect such a number of votes on the next day, as would turn the election in his favor.



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Eight voters polled on the sixth day;—on the seventh there were thirty-six. Of the latter number, however, twenty-three were committeemen on either side;—six voters polled after four o'clock, of whom the mayor being one, voted a few minutes before five; two others voted after him, the last of them after the clock had struck.

Former elections had usually lasted from two to four days; but in 1806, the election lasted nine days, the number of freemen then being eight hundred and ninety, of whom seven hundred and eighty polled.—By the list of freemen, the number now appeared to be nine hundred and seventy-eight, of whom one hundred and sixty-four were unpolled, at the end of the seventh day; of which latter number, twenty-six were resident in, or within ten miles of *Rochester*; sixty-one were said to be disfranchised, by holding offices; fifty-two were supposed to be abroad, or dead; and of fifteen no account whatever was given. Under these circumstances, the mayor, having caused the usual proclamations to be made, closed the poll at three minutes past five o'clock on the seventh day.

Within an hour after the election, one voter arrived, for the purpose of voting, and five others arrived the next morning.



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The committee decided that the returning officer closed the poll prematurely, and that the election was void. In the trial of the above case, the general proposition insisted upon by the petitioners' counsel, was; "that when one of two candidates is a-head upon the poll, the returning officer ought not to close the poll, while there is a well-founded expectation that within a reasonable time so many voters may come in as would turn the majority the other way (a)."

App. cccliii.

By the above-mentioned clause of the stat. 25 G. 3, c. 84, § 1 (b), if the poll at any election shall continue until the fifteenth day, it is, in such case, to be finally closed at or before three in the afternoon of that day.

Polls continuing till the fifteenth day, to be closed at or before three o'clock.

With respect to electors for the county of *Southampton*:—The poll at *Winchester* is, by the stat. 25 Geo. 3, c. 84, § 16, to be closed within fifteen days at the most; and the ad-

County of  
*Southampton*.

Poll to be closed at *Winchester* in fifteen days, and at *Newport* in three days.

(a) A bill which was brought into parliament, and having been read twice was thrown out upon the third reading, on the 2d of March, 1818, contained a clause tending very much to limit the duration of polls, by a provision, that in every instance, where a poll was demanded, it should close at the expiration of the seventh hour on the second day, un-

less 400 votes should have polled, in the whole; 200 whereof, on the second day; and so at the same hour on the third, or any subsequent day, wherein 400 voters should not have polled, unless it should appear that voters were prevented coming up to the poll by riots.

(b) For this stat. see *ante*, 624.



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Ante, 628.

journe'd poll at *Newport* having commenced as before-mentioned, is to continue not longer than three days at the most.

London.

App. lx.

Poll to be finished in seven days.

With respect to elections for *London*:—By the stat. 11 Geo. 1, c. 18, § 4, the poll is to be finished within seven days, exclusive of *Sundays*.

2. Of the proclamations for closing the poll :

WHEN the returning officer has decided that it is proper to close the poll, and it is intended so to do, he causes proclamations to be made, giving notice of such intention.

These proclamations are usually three in number, and made at short intervals from each other, purporting that the poll is about to be closed, or that it will be closed at a certain time (*a*).

9 Journ. 439.

Proclamations necessary.

In the *Dorchester* case, 15th February, 1677, one of the reasons given why the election was adjudged void, was, “That the sheriff made no due proclamation before he closed the poll.”

(*a*) For the form of a proclamation for closing the poll, App. ccclx.



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Proclamations therefore may be considered as necessary wherever the returning officer proceeds to close the poll before the expiration of the full time allowed by the statute, but not where the poll is protracted to the last hour (a), except where the poll lasts the full time.

(a) In the *Bedfordshire* case, 1784, 1 Lud. 351, the election began on the 7th April. The sheriff, in the latter days of the poll, finding the number of voters diminish considerably, and both parties determined to persevere, resolved to close the poll, if possible, without their consent; for which purpose he frequently made the usual proclamations, the effect of which was as often prevented by the polling of fresh voters, (it being usual there to repeat the proclamations upon a single freeholder coming in). At length the sheriff having of himself determined finally to conclude the election at some precise time, intimated his resolution to the candidates in the evening of the 16th, and on the 17th in the morning; adding his wish, that they would come to some agreement upon the subject among themselves; hereupon, in the morning of the 17th, they agreed to close the poll at six o'clock in the afternoon of that day; and the sheriff then directed a proclamation to be made for this end, (a memorandum of which he reduced into writing, to which all the candidates signed their names.) Accordingly, at six o'clock the poll was closed,

with an adjournment of the county court to *Monday*, the 19th, in order to consider the rights of the votes tendered before six, and not then accepted, for want of time. The conduct of the sheriff met with no animadversion from the committee.

In the *Nottingham* election, 1807, Dr. *Crompton* complained that the poll had been irregularly closed. It appeared that on the *Wednesday*, in the first week of the election, and on subsequent days, hand bills were distributed, and the bellman went round the town to give notice that the returning officers would take the first opportunity of closing the poll. On the *Thursday* only very few voters (in proportion to the number of electors) polled, and on the two next days they came up very slowly; and proclamations were occasionally made, but rendered ineffectual by tenders of single votes, or very few at a time, always in the interest of the petitioner. Upon one of these days the poll might have been closed, but it was not wished to do it on a market day. This was also the case on the *Monday*, *Tuesday*, and *Wednesday*, in the second week, although the voters



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when the law steps in to determine it by virtue of the before mentioned act of 25 Geo. 3, c. 84, § 1 (a).

### 3. As to the case of an equality of numbers :

came in greater numbers than before on those days. The returning officers conceiving at length that they were trifled with, determined to close the poll on the *Wednesday*, being the tenth day. Between three and four o'clock thirty-two voters polled, and between four and five o'clock twelve voters polled. At that time the poll being at a stand, and nobody being before the commissioners for administering oaths, the officer was directed to make the proclamations. Nearly half the number of those who were entitled to vote were still unpolled, (towards 3000 having polled at an election shortly previous). It had been usual at *Nottingham*, when a poll was closed by proclamations, that they should be nine in number, in sets of three each, and for the assessor to direct not only when the first should be made, but to wait a competent time, and then direct the second, and so on. When proclamations were first resorted to, the ancient usage of the town was pursued, nine were always attempted to be made, and the time allowed between each proclamation was not less than fifteen minutes, but the intervals

had been made shorter and shorter as the election advanced. Before the last proclamation was made, they had not exceeded five or seven minutes, and the number of proclamations by which the poll was finally closed was reduced to three only, and those succeeded each other so rapidly, that the whole time consumed in making them all, did not exceed five minutes.

It therefore became a question, whether there was a sufficient interval between each, to allow a voter to tender his vote in obedience to them. It appeared, that as soon as three proclamations had been hurried over, the assessor asked if there were any voters to poll, and then declared the poll to be closed, and directed a paper, which the poll clerk had been ordered to have ready prepared, containing the numbers appearing on his books, to be given to the officer, who had been making the proclamations, and the numbers were proclaimed.

Dr. *Crompton's* petition was, under the above facts, voted frivolous and vexatious. Heyw. Co. El. 595.

(a) For this clause, see *ante*, 623, 624.



Before concluding this part of the subject, it is necessary to notice a case which occasionally happens, that of an equality of numbers when the poll is about to be closed.

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It was laid down in the case of *Winchelsea*, 1623 (a), that, upon an equality of voices, "the electors ought to continue together, or meet again, by adjournment, till they can agree to an election by plurality of voices."

Glanv. 12. 21.  
Formerly on  
equality of  
voices, electors  
to continue till  
they agreed, or  
to meet again.

An adjournment of this nature took place, and the election under it was adopted, in the case of *Chippenham*, 12th March 1623; Sir *Francis Popham* and Mr. *Pym*, at first, had an equality of voices, as to one of the seats. The voices were afterwards taken without reference to the former poll, and the election was decided in favor of Sir *Francis Popham*, by the votes of some additional voters, who came in. Two returns were made, in one of which Sir *Francis Popham* was returned, and in the other Mr. *Pym*. The committee and the house resolved in favor of the election of Sir *Francis Popham*.

Glanv. 51, 52.  
61.

1 Journ. 684.

Same point.

(a) It is also further laid down in the above case, that in an assembly for an election, he which, at the beginning of the election, pronounceth his voice one way, finding the voices equally di-

vided, may, before the assembly be dissolved, change his mind, and give his voice another way, and so make a good election that way, by plurality of voices. Glanv.

22.



## Sect. 1.

In case of  
equality,  
present prac-  
tice to make a  
double return.

(See *post*, chap.  
13, sect. 11.)

This practice has given way to that of making a return of each candidate having such equality, which is the course now usually adopted in such cases. Where this is done, it rests with the house of commons to decide upon the different claims to the seat; and in the event of the numbers continuing upon such investigation to be equal, when the franchises are probed by parliament, the election will be void.

Whether re-  
turning officer  
is to have a  
casting vote.

In some instances a right has been claimed, in cases of equality, by returning officers to give the casting voice.

Glanv. 21.

The language of the 6th resolution, however, in the abovementioned case of *Winchelsea*, is that “of common right, in case of equality of voices, the mayor of a town hath no casting or overruling voice, in the affirmative, to carry an election, without the help of a custom, or some other special matter, to enable him in that behalf.”

9 Journ. 118.

*Bridgewater*, 7th December, 1669. The numbers were rendered equal, by the vote of the mayor, in his capacity of burgess, and then as mayor, he gave a casting voice for Sir *Francis Rolle*, who was returned thereupon. The house, upon petition, resolved, that he was not duly chosen.



*New Windsor*, 14th May, 1689, Sir *Algernon May* had twelve voices, without the mayor, and Sect. 1.  
10 Journ. 132. Sir *Christopher Wren* had twelve voices with the mayor; neither were holden to be duly elected.

In the case of *Hastings*, 20th Jan. 1698, a 12 Journ. 444. similar claim was also made by the mayor, who voted for Mr. *Gott*, the sitting member. The house, upon petition, resolved that Mr. *Gott* was duly elected.—But in this, as well as in the other cases just mentioned, the decision was upon the whole matter, and as in each, there were questions as to the legality of other votes, the admission or rejection of which would have given the majority to either party, independent of the votes in question, no satisfactory inference can be drawn (a) therefrom (b).

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SECTION 2. *Of declaring the Majority.*

WHEN the poll has been once formally closed, Poll, once closed, cannot be revived. it cannot be revived. This was holden in the

(a) *Mitchell*, 1784. A claim was set up for the port-reeve to have a casting vote, but it was given up without argument, 1 Lud. 77, 78, as was a similar claim on the part of the mayor of *Banbury*, in the petition of the 7th July, 1807.

(b) The court of King's Bench decided, that, under a charter, directing the election of senior bailiff to be made by a majority of a select body, a bye-law, giving a casting vote to the presiding officer, is bad. *The King v. Ginever*, T. T. 36 Geo. 3. 6 T. R. 732.



Sect. 2.  
Glanv. 71.

case of *Arundel*, 24th March 1723. The numbers had been pronounced, Mr. *Mill* having twenty-nine voices, Sir *George Chaworth* twenty-seven; but the mayor refusing to dissolve the assembly, all the electors departed, except himself, the steward, and two more electors; they continued, and, sending for more electors, by this means obtained a majority for Sir *George Chaworth*, who was returned. This election was set aside, and Mr. *Mill* was resolved to be duly elected.

In order, however, to make it conclusive, it seems that it must be understood at the time to be a formal and decisive close of the poll.

10 Journ. 72,  
73.  
S. C. ante, 449.

*Cricklade*, 1st April, 1689. The returning officer, under pretence of danger to himself, closed the poll before all the electors had voted; and the poll, which was afterwards carried on by the constable, was admitted, and acted upon by the house; it being resolved, that Mr. *Freke*, who was returned according to the poll taken by the constable, was duly elected, and not Mr. *Webb*, who was returned according to the numbers when the poll was first closed as above.

The next duty of the returning officer upon the close of the poll is to declare the majority;



this is done either immediately or after an adjournment. This latter course is usually adopted where the numbers upon the poll are considerable, or where there are any queried votes to be decided, an adjournment being in such cases generally necessary.

Sect. 2.

To the period of such adjournment until the stat. 25 Geo. 3, c. 84, there was no restriction, except that which in the case of a new parliament arose from the necessity of returning the writ at a given day. Under the statute (*a*), alluded to, a returning officer has now but little discretion, being required by § 1 immediately, or on the day next after the final close of the poll, truly, fairly, and publicly to declare the name or names of the person or persons having the majority of votes on the poll.

Returning officer to declare the majority on day of close of poll, or next day at farthest.

In the declaration of the numbers, the duty of the returning officer is purely ministerial, and he is to act according to the existing numbers at the time of such declaration, without reference to the validity or invalidity of the votes; having once admitted them as good, he is bound to treat them as such, except he shall rescind his judgment in a formal reconsideration of the poll by way of scrutiny.

Middlesex, 1805.

2 Peck: 338, &c. and the cases there.

(*a*) See this clause, *ante*, 624.



## Sect. 3.

London, App.  
lx.

With respect to elections for *London*:—The stat. 11 Geo. 1. c. 18. § 4, directs, that when the poll is finished, the poll-books having been sealed, and afterwards opened according to the directions of that act, they shall be cast up, and within two days afterwards, the numbers of the votes for each candidate shall be declared to the electors at the place of election.

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SECTION 3. *Of Scrutiny.*

What a scrutiny.

A SCRUTINY is a general reconsideration by the returning officer, either of the poll altogether, or as between particular candidates, for the purpose of maturely examining the validity of the votes, or the grounds of claims respectively received or rejected; and of amending it, by the correction of decisions either way, which should prove to have been erroneous.

The phrase was formerly used indiscriminately with that of “poll:” lord *Coke* (a), and *Whitelocke* (b), both use it in that sense.

That which is now technically termed a “scrutiny” is comparatively of modern date,

(a) See *ante*, 573.

(b) *Ib.* n. See also *Cambridgeshire*, 19th April, 1614,

1 Journ. 468. University of Oxford, 17th March, 1625, 1 Journ. 837.



## Sect. 3.

and seems to have grown out of the practice of receiving votes conditionally upon the poll, and entering into an examination of their sufficiency after the poll was closed (*a*).

This examination (at first mostly confined to votes objected to, at the time of polling), was made and regulated, in a great degree, by consent of candidates and electors, and without such consent, it is questionable how far it was originally legal (*b*).

In the early instances it did not always take place before the returning officer, other persons being sometimes agreed upon to take the examination, as in the case of *Devizes*, 22d December, 1690, where the poll was, by agreement of the candidates, scrutinized by two of the council, and two gentlemen.

However this practice originated, and with whatever qualifications it was formerly modified, the legality of it, in its present form, as holden by the returning officer, has been recognized in various cases, and ultimately by act of parliament.

(*a*) *Abingdon*, 7 May, 1689, 10 Journ. 123. *Colchester*, 11th November, 1690, 10 Journ. 466. *Devizes*, 22d December, 1690, 10 Journ. 521. *Chippenham*, 1st December, 1691, 10 Journ. 568. (*b*) *Worcester*, 7th February, 1693, 11 Journ. 82.



## Sect. 3.

Discretionary  
in returning  
officer to grant  
a scrutiny or  
not, (except in  
the case of  
*London*, *post*,  
714.)

It has always been, and continues (with the exception of the case of elections for *London*) to be discretionary in the returning officer to grant or refuse a scrutiny, nor has there been any inclination in the house nicely to question the exercise of this discretion.

In several cases it has been a subject of complaint, that a scrutiny has been either partially or wholly refused. Such were those of *Worcester*, 7th February, 1693; *Colchester*, 29th November, 1695; *Southwark*, 27th December, 1695; *York*, 16th December, 1698; *Great Marlow*, 11th December, 1744.

11 Journ. 84.  
*Ib.* 341.  
*Ib.* 370.  
12 Journ. 356.  
24 Journ. 696.  
714.

Phillips, 132.

In the *Sudbury* case, where the petitioner had the majority at the close of the poll, he complained that a scrutiny was illegally granted, but in none of the above cases was the conduct of the returning officer, in either refusing or granting a scrutiny, at all censured.

3d March,  
1698.

12 Journ. 542.

It was at one time in agitation to have made a scrutiny in all instances a matter of right, and leave was given to bring in a bill for that purpose; but the law was left unaltered.

The statute alluded to, as recognizing the scrutiny, is that of the 25 Geo. 3. c. 84. § 1 (a),

(a) For this clause, see *ante*, 623, 624.



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which after laying down the injunctions already noticed, as to commencing and carrying on the poll, and the declaration of the majority, directs a return forthwith, unless the returning officer “upon a scrutiny being demanded by any candidate, or any two or more electors, shall deem it necessary to grant the same;” in which case, it shall and may be lawful for him so to do, and to proceed thereupon.

And by § 2 and 6, directions are given for (*Post*, 710, 711.) proceedings upon the scrutiny.

No particular time is assigned within which a scrutiny is to be demanded, but as the return is to be made forthwith, and as it seems necessary that there should be an adjournment, it would be prudent in a party, intending to apply for a scrutiny, to make the demand (*a*) either when the numbers are about to be declared, or immediately thereupon.

As to time within which scrutiny to be applied for.

If, upon the demand of a scrutiny, the returning officer deem it right to grant it, an ad-

If a scrutiny granted, there should be an adjournment of proceedings.

(*a*) In the case of *Guildford*, 24th April, 1689, the scrutiny was demanded after the poll was closed, and the numbers ascertained, and the scrutiny was had and acted upon; but, as the petitioner had the smallest number of

votes both upon the poll and upon the scrutiny, the legality of the latter was not in dispute. In general, in the cases upon this subject, the time of demanding the scrutiny is not mentioned. 10 Journ. 100.



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journalment should be made of the election proceedings to a proper time and place.

17 Journ. 73.

*Southwark*, 7th Feb. 1711. The committee resolved, that at the late election the poll, being closed and cast up, and the majority of votes declared by proclamation for sir *George Matthews* and *Henry Martin*, esq. the bailiff could not proceed to a scrutiny, not having adjourned to any time or place, and the house agreed.

Votes to be decided upon alternately.

In proceeding in the scrutiny, the stat. 25 Geo. 3. c. 84. § 2 (a), directs, that where there

(a) The stat. 25 Geo. 3. c. 84. (*For the title, see ante, 533. § 1. ante, 623.*)

§ 2. “ And be it enacted, “ that whenever a scrutiny “ shall be granted as afore- “ said, and there shall be “ more parties than one ob- “ jecting to votes on such “ scrutiny, the returning of- “ ficer, or returning officers, “ shall decide alternately, or “ by turns, on the votes given “ for the different candidates, “ who shall be parties to such “ scrutiny, or against whom “ the same shall be carried “ on.”

(*For § 3. see ante, 629. § 4, ante, 533. § 5, ante, 648.*)

§ 6. “ And be it further “ enacted, that from and after “ the first day of August, one “ thousand seven hundred “ and eighty-five, upon every “ election of any member or

“ members to serve in par- “ liament for any county, “ city, borough, or place “ within *England*, or *Wales*, or “ for *Berwick-upon-Tweed*, it “ shall and may be lawful for “ the returning officer or of- “ ficers, if he or they see “ cause, and he and they are “ in such case authorized, “ during the continuance of “ any scrutiny, which shall “ have been granted as afore- “ said, to administer an oath “ to any person whatsoever, “ consenting to take the “ same, touching the right “ of any person having voted “ at such election, or touch- “ ing any other matter or “ thing material or necessary “ towards carrying on such “ scrutiny.”

(*For § 7, see ante, 584. § 8, ante, 649. § 9, ante, 626. § 10, 11, 12. post, part 3. For § 14, post, chap. 13. section . § 15. ante, 630. § 16, ante, 628.*)



are more parties than one objecting to votes on the poll, the returning officer is to decide alternately, upon the votes given for the different candidates, who shall be parties to the scrutiny, or against whom it shall be carried on.

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The same statute, by § 6, empowers the administration of an oath, touching the right of any person having voted at the election, or any other matter, material or necessary towards carrying on the scrutiny.—The penalties of perjury, and subornation of perjury, being imposed at the same time by § 8 (*a*), upon persons falsely swearing or affirming, or suborning others so to do.

Oath may be administered.

By this act, coupled also with that of the 7 & 8 W. 3, c. 34, and 22 Geo. 2, c. 30, it seems that an affirmation may also be administered to quakers or Moravians.

*Ante*, 638.

*Ante*, 642.

This provision, however, with respect to the administration of an oath, is, in some degree, qualified, the terms of the clause only authorizing it in the case of persons consenting to take it; and, with respect to the general powers of the returning officer, in holding the scrutiny, they are altogether very limited; he has no authority to enforce the attendance of witnesses, or to compel them to be examined.

Oath only to be administered to persons consenting.

(*a*) For this clause, see *ante*, 649.



## Sect. 3.

Duration of  
scrutiny.

The duration of the scrutiny, in the case of general elections, is limited only by the necessity of making the return to the writ (*a*), or precept (*b*).

(*a*) At the general election of 1754, the scrutiny at the *Oxfordshire* election being unfinished at the return of the writ, the sheriff made a double return. A motion that he should attend the house to answer for so doing was negatived. 27 Journ. 17. 22.

(*b*) *Westminster*, 1784. It became a question, whether a scrutiny could be proceeded in after the return-day of the writ was passed. The parliament was summoned for the 18th May, when the bailiff made a special return of a scrutiny pending, &c.;—25th May, Mr. *Fox* petitioned, praying that the bailiff might be compelled to return him, he having a majority upon the poll. 2d June. A counter petition of electors was presented, praying that the sheriff might proceed with the scrutiny. 8th June. The house ordered the bailiff to proceed in the scrutiny with all possible dispatch. 1st, 8th, and 9th Feb. 1785. No return having been made, the house having examined into the matter, resolved, “that the speaker do acquaint the high bailiff, first, that he is not precluded by the resolution of this house, communicated to him on the 8th June last, from making a return, whenever he shall be satisfied

in his own judgment, that he can do so; and secondly, that the house is not satisfied that the scrutiny has been proceeded in as expeditiously as it might have been; that it is his duty to adopt and enforce such just and reasonable regulations as shall appear to him most likely to prevent unnecessary delay in future; that he is not precluded from so doing by the want of consent of either party; and that he may be assured of the support of this house in so doing.” 3d March. The house ordered the [bailiff forthwith to make a return. 4th March. The bailiff returned lord *Hood* and Mr. *Fox*, stating also at the same time, that a scrutiny was pending. The house ordered that the return should be annexed to the writ for the county of *Middlesex*. 40 Journ. 473. 503. 508, 509. 577. 588. 624.

Mr. *Fox* afterwards brought an action in the court of common pleas, against Mr. *Corbett*, the high bailiff, for not having returned him in due time, so that the sheriff for the county of *Middlesex* might have made a return to his writ, on the day appointed. This action came on to be tried at the sittings at *Westminster-hall* in *Trinity* term, 26 Geo. 3. (19th June, 1786)



With respect to elections under a writ:—

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The above statute of 25 Geo. 3, c. 84 (a), after having laid down that it should be lawful for the returning officer to grant the scrutiny, proceeds, “but so as that in all cases of a general election, every returning officer or officers, having the return of a writ, shall cause a return of a member or members to be filed in the crown office, on or before the day on which such writ is returnable.”

Limitation of time for scrutiny, at elections under writs.

With respect to elections under a mandate or precept:—The same clause directs, that a return shall be made six days before the return of the writ, and so far limits the duration of the scrutiny.

Limitation of time for scrutiny at other elections.

As to elections upon vacancy; neither the writ, nor precept thereunder being returnable, within any particular time, the same clause, contemplating such case, directs, that in case of any election, upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted, then, that a return of a member or members shall be made within thirty days

Scrutiny not to exceed 30 days at any election upon vacancy.

before lord *Loughborough*, and the jury gave a verdict for the plaintiff, with £2000 damages. On the 21st June a rule *nisi* was obtained to arrest the judgment, and a few days afterwards that rule was dis-

charged, no cause being shewn, and final judgment was entered up. *Heyw. Co. El. 655, et seq.*

(a) For this clause see *ante*, 623, 624.



## Sect. 3.

after the close of the poll, (or sooner if the same can conveniently be done).

*London.*  
*App ix.*

With respect to elections for *London*:

Particular re-  
gulations as to  
scrutiny.

By the statute 11 Geo. 1, c. 18, § 4, if a scrutiny be lawfully demanded, the same shall be granted and proceeded upon. The respective candidates are to nominate any number of persons qualified to vote at the election, not exceeding six, to be scrutineers on their behalf, to whom the presiding officer or officers, is, within six days after such scrutiny demanded, upon request, and at the charge of the candidate or candidates, or any of the scrutineers, on his or their behalfs, to furnish a true copy, signed by such officer or officers, of the poll taken at such election. By the same act, the scrutinies are to begin within ten days after the delivery of such copies of the polls, and be proceeded on, day by day (*Sundays* excepted) and shall be finished within fifteen days after the commencement of such scrutiny; and such officer or officers is or are, within four days after the finishing of the scrutiny, publicly to declare, at the place of election, which of the candidates is or are duly elected, and the number of legal votes for each.



SECTION 4. *Of the custody of the poll-books, and of giving copies thereof.*

WHEN the poll is closed, and the scrutiny (where one has been applied for and granted) is finished, the returning officer is then to make the return according to the choice of the electors thus ascertained. The particulars of this duty will be spoken of in the following chapter; it only remains here, to notice the regulations with respect to the books, wherein the poll has been taken at the election.

With respect to elections for knights of shires:—The stat. 10 Ann. c. 23, § 5, directs the sheriff, or returning officer, within the space of twenty days after the election, faithfully to deliver over, upon oath, (to be administered as therein), to the clerk of the peace of the county, all the poll-books of the election, without embezzlement or alteration.

County elections.

App. DXXXIV.

Returning officer, within 20 days, to deliver poll-books on oath, to clerk of the peace.

And by the same clause, in counties having more than one clerk of the peace, the original poll-books are to be delivered to one of such clerks of the peace, and attested copies thereof to the rest. The poll-books, and copies so delivered, are to be carefully kept and preserved among the records of the sessions of the county.

If more than one clerk of peace, original to be delivered to one; copies to the rest.



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2 Str. 1048.

Where more  
than one  
taken, all  
should be  
delivered.

In the case of the *King v. Davis*, Tr. T. 9 Geo. 2, a question was made, five poll-books having been taken at the *Radnorshire* election, whether all should be delivered to the clerk of the peace. The sheriff carried in that only, which was taken by his clerk, as being the original poll, and the others only checks; and insisted, that the act, in requiring all the poll-books to be lodged, meant only in the case where the poll is going on at different booths, and all the books make but one poll. But the court held, that all the books ought to have been carried in; and granted an information against the sheriff for not doing it (*a*).

Other than  
county elec-  
tions, no re-  
gulations by  
statute.

With respect to other elections:—There is no statutory provision for the preservation of the poll-books, but from the cases which will be adverted to, when upon the subject of proceedings upon controverted elections, the importance of these documents will abundantly appear (*b*).

Copies of poll  
to be delivered  
at request, &c.

It is frequently of great moment, with a view to any subsequent enquiry, to ascertain correctly the contents of the poll-book; the law has there-

(*a*) Sir John Strange adds, that upon a reference to the attorney-general and himself, they reported for a *nolle prosequi*, it not being a wilful, if any mistake. See a question as to evidence given of a copy

of a poll in an action for bribery, *Robinson v. Mead*, Willes, 422.

(*b*) See the case of *Dungarvon*, 1808, &c. *post*, 721, and *App. cccxxxvii*.



fore made a provision by the statute 7 and 8 W. 3, c. 25. § 6 (a), directing that every returning officer shall deliver, to any person or persons who shall desire it, a copy of the poll, he or they paying only a reasonable charge for writing the same; and this under penalty of £500 to the party grieved.

Sect. 5.

### SECTION 5. *Scotland.*

THERE are no statutory provisions which belong to the subject of this chapter. Neither in practice is a scrutiny known (at elections in *Scotland*).

(a) The stat. 7 & 8 W. 3. c. 25. For the title & § 1, 2, see *ante*, 347. For § 3, 4, 5, see *ante*, 518, 519.)

§ 6. “ And be it further  
“ enacted, that every sheriff,  
“ under-sheriff, mayor, bai-  
“ liff, and other officer to  
“ whom the execution of any  
“ writ or precept shall belong  
“ for the electing of members  
“ to serve in parliament,  
“ shall forthwith deliver to  
“ such person or persons as  
“ shall desire the same, a  
“ copy of the poll taken at  
“ such election, paying only  
“ a reasonable charge for  
“ writing the same, and  
“ every sheriff, under-sheriff,  
“ mayor, bailiff, and other  
“ officer, to whom the execu-

tion of any writ or precept  
“ for electing of members to  
“ serve in parliament doth  
“ belong, for every wilful  
“ offence contrary to this  
“ act shall forfeit to every  
“ party so aggrieved, the sum  
“ of five hundred pounds, to  
“ be recovered by him or  
“ them, his or their executors  
“ or administrators, together  
“ with full costs of suit, and  
“ for which he or they may  
“ sue by action of debt, bill,  
“ plaint, or information, in  
“ any of his majesty's courts  
“ at *Westminster*, wherein no  
“ essoin, protection, wager of  
“ law, privilege, or impar-  
“ lance, shall be admitted or  
“ allowed.” (For § 7, see  
*App.* DXXVII. For § 8, *ante*,  
112. For § 9, *ante*, 534. For  
§ 10, *ante*, 520.)



## Sect. 6.

SECTION 6. *Ireland.*

WITH respect to the duration and close of the poll :

*App. ccxlvii.*  
Penalty on  
returning  
officers, &c.  
wilfully  
protracting  
poll.

Until very recently the duration of the poll was not limited (*a*), except by the general provision of the *Irish* statute 35 Geo. 3, c. 29; by § 15 of which any returning officer or officers, or any deputy appointed in pursuance of that act unnecessarily and wilfully protracting the poll, or guilty of any wilful and unnecessary delay in taking the same, is liable to a penalty of £500 to any person first suing, to be recovered according to the directions of the act.

*See ante,*  
Sect. 1.

The law, with regard to elections in *Ireland*, has now been, in some degree, assimilated to that which is in force in *England*, in this particular, though a much longer time is still allowed for taking the poll at elections in *Ireland*.

*App. cccxiv.*  
Elections for  
counties, and  
places being

At elections, for counties and for places being counties:—By the stat. 57 Geo. 3, c. 131, § 1,

(*a*) Elections in *Ireland* the county of *Down*, in the year 1790, continued for 82 days; and in the last contest for the county of *Mayo*, the election lasted 57 days.



no poll at any election, held by virtue of a writ, is to continue longer than the fortieth day at furthest after the test thereof; and if the poll shall continue until such fortieth day, then the same is to be finally closed, at or before the hour of three in the afternoon of that day.

Sect. 6.

counties, not to continue beyond 40 days.

Poll continuing till 40th day, to close at or before three o'clock.

At other elections:—By the same clause of the above statute. If an election be holden by precept, no poll at such election is to continue longer than the thirtieth day at furthest after the date thereof. And if such poll shall continue until such thirtieth day, it is to be finally closed at or before the hour of three in the afternoon of that day.

*App. ccccxv.*  
Other elections not to continue beyond 30 days.

Poll continuing till 30th day, to close at or before three o'clock.

The law has not only thus limited the duration of the poll, at the respective elections, but in the same spirit has directed a partial close of the poll to be made in certain cases, under the statute 57 Geo. 3, c. 131, § 2, which authorizes and requires returning officers, on any day after the *fourth* day of polling, to close finally any booth where no more than twenty electors have polled, or have been referred for decision to the returning officer's booth.

*App. ccccxv.*  
After 4th day, booths at which 20 electors have not polled, or been referred, to be closed.

As to the case of an equality of numbers:



## Sect. 6.

*App. cclvi.*  
Returning officer to have a casting vote in all cases of equality, and obliged to give it.

By the *Irish* stat. 35 Geo. 3, c. 29, § 13, every returning officer has a casting vote, and, in case of equality, he shall be obliged to give such vote, whether otherwise legally qualified to vote or not, or whether he shall have voted or not at the election.

*App. ccxcv.*  
In counties of cities, &c. where two sheriffs, he whose name stands first to give such vote.

By the stat. 37 Geo. 3, c. 47, § 14. In counties of cities and towns, where there are two sheriffs, the sheriff whose name stands first in the appointment to the office, is to give such casting vote.

See *ante*,  
Sect. 2.

*App. ccccxv.*  
Returning officer to declare the majority on day of close of poll, or next day at farthest.

As to declaring the majority:—The stat. 57 Geo. 3, c. 131, § 1, by a provision corresponding to that respecting elections in *England*, after regulating for the close of the poll, directs returning officers at all elections immediately or on the day next after the final close of the poll, truly, fairly, and publickly to declare the name or names of the person or persons having the majority of votes on the poll.

No scrutiny at elections in *Ireland*.

There is no provision for a scrutiny at elections in *Ireland*.

See *ante*, sect. 4.  
County elections.

*App. cclxviii.*  
Poll-books to

With respect to the custody of the poll-books, as to elections for knights of shires:—The *Irish* stat. 35 Geo. 3, c. 29, § 16, requires every



sheriff, presiding at any election for a knight or knights of the shire, within twenty days next after the election shall have closed, faithfully to deliver over to the clerk of the peace of the county, all the poll-books of such election, verifying, upon oath, that he delivers them without any embezzlement, obliteration, erasure, or alteration, to be carefully kept and preserved amongst the records of the county.

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be delivered to clerk of peace,

to be kept among county records.

With respect to other elections:—The observation which was made, as regarding the poll-books at elections in *England*, applies equally to those in *Ireland*; and the importance of such document was fully confirmed in the case of *Dungarvon*, 1808, wherein the petition of Mr. *Keane* fell to the ground, from an inability, on his part, to establish, by sufficient evidence, the authenticity of the poll-book; the committee considering that as a preliminary step, without which they could entertain no proceedings touching the election and return.

Other elections.

App. ccccxvii.



## CHAPTER XIII.

## OF RETURNS.

SECTION 1. *Of returns to writs and precepts respectively, and where each are to be made.*

SECTION 2. *Of the diligence exacted by the law of parliament in making returns.*

SECTION 3. *Of the time limited by the statute law for making returns to writs and precepts respectively, there being no scrutiny.*

SECTION 4. *Of the time limited by the statute law for making returns to writs and precepts respectively, there being a scrutiny.*

SECTION 5. *Of the manner of, and the parties to returns to writs and precepts respectively; of default in these particulars, and how far it will affect returns.*

SECTION 6. *Of the principle upon which returns are to be made, and herein how far the returning officer is bound by the poll-book.*

SECTION 7. *The making of due returns how enforced by the statute law, and the law of parliament.*

SECTION 8. *Of false returns, and the responsibility to the house in respect thereof.*

SECTION 9. *Of special returns.*

SECTION 10. *Whether the disability of the persons chosen can affect returns in the first instance.*

SECTION 11. *Of double returns.*

SECTION 12. *Of the remedy to the party grieved in cases of false returns, or double returns improperly made; or of delay or refusal in making returns.*



SECTION 13. *Of the duty of the clerk of the crown upon receiving returns; of amending the same; and of the penalties in respect of illegal alterations of returns.*

Sect. 1.

SECTION 14. *Of the illegality of contracts to procure returns, or to procure false or double returns, and the penalty in respect thereof.*

SECTION 15. *Scotland.*

SECTION 16. *Ireland.*

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**W**HEN the election has been completed, and the majority ascertained by the view, the poll, or the scrutiny, the returning officer holding the election is to make his return of the person or persons chosen (*a*).

Before the stat. 7 *Hen.* 4, c. 15, the writs were returnable into parliament (*b*). The return of

Writs formerly  
returnable into  
parliament.

(*a*) By the statute 7 and 8 *W.* 3, c. 25, § 2, neither the sheriff nor his under-sheriff in any county or city nor the mayor, &c. or other officer or officers of any borough, town corporate, port or place to whom the execution of any writ or precept belongs, is to give, pay, receive, or take any reward or gratuity whatsoever, for the making out receipt, delivery, return, or execution of any writ or precept. (*For this statute, see ante, 347, 348.*)

By the statute 10 and 11 *W.* 3, c. 7, § 1. The sheriff or other person making a return of a writ is to pay to the clerk of the crown the ancient

and lawful fees of four shillings, and no more, for every knight of a shire, and two shillings and no more for every citizen, burgess, or baron of the cinque ports, returned into the court (of chancery) to be by him filed; and the sheriff or officer is to charge the same to his majesty, and have allowance thereof in his account in the exchequer or elsewhere. (*For this statute, see post.*)

(*b*) This was one of the reasons given by the commons, to *James* the First for refusing a conference upon the matter of the election of *Sir Francis Goodwin*. 3d April, 1604, 1 Journ. 163.



## Sect. 1.

Returns now  
made into  
chancery.

the elections of members are now made, some in the first instance, but all ultimately into chancery.—This is in conformity to the clause in the writ directed to be therein inserted by the stat. 7 *Hen.* 4, c. 15 (*a*), the obedience to which statute is enforced by the statute 23 *Hen.* 6, c. 14 (*b*), (clause 11).

Returns to be  
made to clerk  
of the crown.

The clerk of the crown is the officer in chancery, into whose department the returns are made (*c*).

As to returns to writs :

Returns of  
knights of  
shires im-  
mediate to crown  
office.

In the case of elections for knights of shires, other than of the counties palatine, or of members for cities, &c. which are counties of themselves, the election being holden under the immediate authority of the writ, the return is at once made into the crown-office in chancery, by the person to whom the writ was directed, without any further intervention.

2. As to returns to precepts :

(*a*) For this stat. see *ante*, 529, 530.

(*b*) For this stat. see *ante*, 396—401.

(*c*) The law does not point out any particular person by whom any return is to be delivered into the crown-

office. The officer, however, making it, will be responsible for entrusting it in proper hands. It seems that a person elected would be the fittest person to be the bearer of his own return.



It will be remembered that in the case of the elections of knights of the shire in counties palatine, and of citizens and burgesses for all cities and boroughs, there is an emanation from the writ, in the shape of a mandate or precept. With regard to the return in these cases, there is a *sub-return*, in the first instance, made by the officer holding the election, to him from whom his authority was immediately derived. And again, the officer who delegated his authority by the mandate or precept, and who so receives such *sub-return*, thereupon makes the principal return into chancery.

## Sect. 1.

Sub-return and principal return of knights of shires in counties palatine.

*Ante*, 395.

With regard to elections in the counties palatine, for members for places being counties, and for cities and boroughs:

Sub-returns, and returns of members for places in counties palatine.

There is a *sub-return*, in the first instance, to the mandate or precept, (as in other cities and boroughs,) made by the officer holding the election, to the sheriff; there is then another *sub-return* by the sheriff, to the officer to whom the writ was directed; and he makes the return into chancery.



## Sect. 2.

SECTION 2. *Of the diligence exacted by the law of parliament in making returns.*

Returns to be made with due diligence.

THE time for making returns, as limited by the written law, will presently be pointed out; but, exclusive of the positive directions in the statutes, the law of parliament exacts that returns should be made with all due diligence.

Inquiry by the house of commons as to making returns.

The house of commons has been ever jealous upon the subject of returns, and in whatever appertains to it; and when there has been any irregularity, whether upon the more substantial questions of true or false returns, or upon the minor ones of formal or informal returns, it has strictly enquired into the conduct of those concerned, making such orders as the occasion required, frequently censuring, and frequently punishing the authors of the mischief.

It is not probable that under the existing provisions of the acts of parliament evils of this nature will very much occur; it may, nevertheless, be well to enquire into the steps taken by the house in cases of neglect or contumacy upon this point.

2 Journ. 61.

*Caernarvonshire*, 1st and 2d January, 1640 (a).

(a) It was ordered that *James Brinker*, Esq. high sheriff of the county, should be forthwith sent for, as a delin-



There was no return of a knight and burgess for the county and town of *Caernarvon* within a month after the election: it was ordered that the high sheriff should be sent for, as a delinquent, to answer this and other misdemeanors by him committed in the carriage of that election. 20th January, on reading his petition he was bailed.

Sect. 2.

Sheriff neglecting to make returns sent for as a delinquent.

2 Journ. 70.

*Berwick*, 19th January, 1664 (a). It was ordered, that the mayor should make his return by a given day named by the house.

8 Journ. 585. Returning officer ordered to make a return by a given day.

*Eye*, 10th and 11th November, 1675 (b). Where a week had elapsed after the election, and no return was made, it was ordered that the sheriff should be summoned to attend the house to account for his neglect, but (probably upon

9 Journ. 371. 373. Delay in return.

quent, by the serjeant at arms, "to answer his neglect and contempt to this house and commonwealth, in not returning a knight and burgess for that town and county, in above a month after the election was made, and to answer other misdemeanors by him committed in the carriage of that election."

(a) A petition of *Thomas Gray*, Esquire, and also a petition of divers electors, having been read, it was ordered, "That the mayor should at his peril make his

return of the election of the member chosen to serve for that town by Saturday next come seven night."

(b) Information being given to the house that the election had been past a week, and the sheriff had hitherto neglected to make a return of the writ, to the injury of the member elected, it was ordered that he should be summoned to attend, and give an account at the bar of the house of his neglect, but the following day the messenger was recalled.



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some further information,) the messenger was recalled before such attendance.

9 Journ. 600.  
620.

Sheriff refusing  
to make a re-  
turn sent for  
in custody.

*Norfolk*, 22d April and 12th May 1679 (a).

The house being informed that the high sheriff refused to make a return, he was sent for in custody.

10 Journ. 362.

Sheriff delay-  
ing to make  
return sent for  
in custody.

*Cardiganshire*, 1st April, 1690. A complaint being made to the house against the high sheriff for the county of *Cardigan*, that he had not yet made any return of the members to serve for the said county into the crown office, (parliament having been summoned for, and met on the 20th of March,) he was ordered into the custody of the serjeant at arms.—4th April, the house being acquainted that since their order he had made his return, he was discharged, paying his fees.

Ibid. 367.

10 Journ. 367.  
370. S. P.

*Caernarvonshire*, 4th April, 1690. Upon a similar complaint against the high sheriff, he

(a) The election was declared void, and a new writ ordered on the 22d April. On the 12th May, the house being informed that the high sheriff refused to make a return of the writ, he was sent for in custody, "for not returning the writ for electing of two knights of the shire to serve in this present parliament for the said county."

Mr. Serjeant *Heywood* observes upon this, that the election was upon a vacancy, and therefore no precise day was fixed for the return; and as only *twenty* days had elapsed after it was issued, we may presume that a county court had intervened, at which he had refused to proceed to the election. See *Co. El.* 2d Ed. 660.



was in like manner ordered into custody,—and on the 8th April, having made his return, he was in like manner discharged.

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*Monmouthshire (a), Nottinghamshire (b), Merionethshire (c), and Montgomeryshire (d), 23d Oct., 1702.* Upon the meeting of parliament, the house taking notice, by the book of returns from the clerk of the crown, that there were no returns made by the sheriffs of those counties, resolved severally that each of such sheriffs, “for not having made a return of his writ, and of the

14 Journ. 3, 4.  
Where no returns made on meeting of parliament, sheriffs ordered into custody.

(a) 18th November, the high sheriff of *Monmouth* petitioned, acknowledging his offence, and praying to be discharged. On the 19th, he was discharged. 14th Journ. 36, 37.

(b) On the 4th November, the high sheriff for *Nottinghamshire*, being in custody, petitioned the house, stating that his under sheriff had undertaken to make the return; and he and the under sheriff were ordered to attend. 14 Journ. 13.—On the 6th November they attended, and the sheriff stated that he did not meddle with the execution or return of the writ, nor ever had it in his possession, but left it to his under sheriff. The high sheriff was discharged, and the under sheriff was ordered into custody. 14 Journ. 18.

(c) 4th Nov.—The speaker acquainted the house, that the sheriff of *Merionethshire*

had made his return of a knight of the shire for the said county.—9th November, the high sheriff petitioned acknowledging his offence, and begging pardon for the same. On the 10th he attended, was examined, and discharged out of custody. 14 Journ. 13. 21. 23.

(d) 2d Nov.—The speaker acquainted the house, that the sheriff of the county of *Montgomery* had made his return of the members for the said county.—7th November, he petitioned, acknowledging his offence.—9th November, he was examined and discharged.—17th. The under sheriff was examined. He acknowledged executing the writ, and signing the return; said that he had no ill design in not sending it up, and begged pardon of the house for not doing it.—14th Journ. 12. 20, 21. 35.



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members elected to serve," &c. "by virtue thereof, was guilty of a breach of the privilege of the house;" and they were severally ordered into the custody of the serjeant at arms (*a*).

18 Journ. 22.  
46.

Returning-officer neglecting to make return by return-day of writ, committed to custody.

*Cumberland*, 24th March 1714. The house taking notice, by the book of returns, that there was no return for this county, the sheriff was ordered to attend the house.—4th April 1715, a complaint being made to the house, that the under sheriff, who executed the writ for electing knights of the shire, had not made any return thereof by the 17th of March last, being the day appointed for such return, by which means none of the members chosen to serve for the said county, or the boroughs therein, could be admitted to give their attendance in this house; it was resolved, that *Thomas Crosby*, under sheriff of the county of C. having neglected to return the writ for electing the members of the said

(*a*) *Lestwithiel*, 28th January, 1709. Complaint being made, that although the election for this borough was on the 10th instant, yet no return was made thereof, the sheriff of the county of *Cornwall* was ordered to attend by himself or his deputy, to give an account why the said return was not made.—1st Feb. The house being informed that no return was yet made, the statute 10 and 11 W. 3. c. 7. was read, and the

sheriff or his deputy was again ordered to attend.—15th February, the sheriff's deputy, &c. attended and were examined; and it appeared that the mayor sent the return the afternoon of the election day; whereupon the high sheriff himself was ordered to attend.—1st March, he attended, and the house being satisfied with his account of the matter, he was discharged from further attendance. 16 Journ. 285. 289. 314. 342.



county by the 17th day of March last, being the day appointed for the return thereof, is guilty of a great breach of the privileges of this house; and he was ordered into the custody of the serjeant at arms (a).

*Westminster, 1749 (b).* The writ was ordered on the 16th November, the election took place on the 22d November. On 22d & 23d February, three months having elapsed, and no return having been made, the house inquired into the deficiency. The high bailiff acquainted the house that he was proceeding in the scrutiny, and excused himself as to any culpable delay. The speaker (by direction of the house) recommended

25 Journ. 1010.  
1015.

Return delayed  
by a scrutiny  
pending, the  
house examin-  
ed into the  
matter, and  
gave direc-  
tions.

(a) 27th April, the under-sheriff petitioned the house, acknowledging his fault, and expressing his contrition, and praying to be released.—On the 29th he was reprimanded and discharged. 18 Journ. 66. 68.

For the cases of *Oxfordshire, 1754*, and *Westminster, 1784*, see *ante*, 712.

(b) The writ issued on a vacancy, Lord *Trentham* and Sir *George Vandeput* were candidates. The former had a majority on the poll; but the latter demanded a scrutiny, which lasted upwards of ninety days.—22d February. Three months having elapsed from the issuing the writ, and no return being filed, notice

was taken in the house of the deficiency; and the proper persons through whose hands the writ or return ought to pass were ordered to attend.—23d February, 1749. They all attended, and were examined, and the high bailiff of the city of *Westminster* acquainted the house, that he was then in the execution of the said precept; that he had all along endeavoured to avoid all unnecessary delay therein; and that, if some delay had happened in the scrutiny of the poll taken at that election, which he was then proceeding upon, it had been only such as he did not think he had sufficient powers to prevent.



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some particulars of his duty to him, and acquainted him, "that if he met with any thing to obstruct him therein, which he could not prevent, he should apply to the house upon it, and might be assured of their support in the discharge of his duty; and that the house expected he would take care, in general, to expedite the election as much as possible." The high bailiff hereupon expressed his great readiness to conform himself to the directions of the house, and said that he would use his best endeavours to expedite the election, and hoped to perform his duty in general to the satisfaction of the house. The scrutiny was finished (*a*), and the return was made during a prorogation of parliament.—28th January 1750, the house called upon the high bailiff to give an account of what he had

26 Journ. 18,  
21.

(*a*) On the 12th April, 1749, the parliament was prorogued, and so from time to time, and did not meet till the 17th January, 1750. During this interval, the scrutiny had been finished, and Lord *Trentham* was returned. Sir *George Vandeput*, and certain electors, petitioned, but these petitions were withdrawn.—On the 28th January, 1750, it was ordered that the high bailiff should attend the house immediately, "in order to give the house an account of what he did in pursuance of the directions given to him by this

house upon the 23d day of February last, in relation to the execution of the precept issued to him in pursuance of the said writ." He was accordingly called in, and examined in relation to what he had done in pursuance of the said directions; and having, in the course of his examination, alleged that the said election was protracted by an affected delay, and being asked by whom the election was protracted, and by what means, he named several persons, who were ordered to attend the house.



done in pursuance of their former directions ;  
and, in consequence of what he stated, several  
persons were ordered to attend the house.

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*Coventry*, 6th Nov. 1780, and 15th March, 1781. 38 Journ. 8,  
294, 295, 296,  
321. S. C. post.  
Where the return stated an inability to execute  
the writ by reason of riots, the house considered  
that that fact was not established ; and after re-  
solving, that the returning officers were not pre-  
vented, by riots or otherwise, from making a  
return, resolved, that they were guilty of a high  
violation of the law, and a gross breach of the  
privileges of the house. And it was ordered that  
for their said offence they should be committed  
to *Newgate*.—March 16, 1781. They were dis-  
charged from their confinement in *Newgate*, but  
ordered to stand committed to the custody of  
the serjeant at arms.—On the 27th of March fol-  
lowing, they were reprimanded and discharged.

There have been other cases, which will be  
subsequently mentioned, where special returns  
were made, but where the facts were not con-  
sidered to justify such returns. The language  
of the resolutions in these, are confirmatory of  
the law which has been above stated.

Such were the cases of *Leicestershire*, 24th 18 Journ. 21,  
58. post. sect. 9.  
March, and 11th April, 1714, and the above 38 Journ. 8,  
294, 296, 321.  
case of *Coventry*.



## Sect. 3.

SECTION 3. *Of the time limited by the statute law for making returns to writs and precepts respectively, there being no scrutiny.*

THE first statutory regulations, with regard to the time of making the returns, were passed with reference to those under writs only; but the later enactments are equally applicable to those under writs and under precepts respectively.

By the statute 5 Ric. 2, stat. 2. c. 4, (a) the

(a) The stat. 5 Ric. 2, stat. 2, c. 4, “Every one to whom it belongeth shall, upon summons, come to the parliament.” [A. D. 1382.]—“Item, the king doth will and command, and it is assented in the parliament by the prelates, lords, and commons, that all and singular persons and commonalties, which from henceforth shall have the summons of the parliament, shall come from henceforth to the parliaments in the manner as they are bound to do, and have been accustomed within the realm of England of old times. (2.) And if any person of the same realm, which from henceforth shall have the

“said summons (be he archbishop, bishop, abbot, prior, duke, earl, baron, banneret, knight of the shire, citizen of city, burghess of borough, or other singular person, or commonalty) do absent himself, and come not at the said summons, (except he may reasonably and honestly excuse him to our lord the king), he shall be amerced and otherwise punished, according as of old times hath been used to be done within the said realm in the said case. (3.) And if any sheriff of the realm be from henceforth negligent in making his returns of writs of the parliament; or that he leave out of the said returns any cities or boroughs, which



king “ did will and command, and it was assented in the parliament by the prelates, lords, and commons, that if any sheriff of the realm should be from thenceforth negligent in making his returns of writs of the parliament, or leave out of the return any cities or boroughs which were bound, and of old time were wont to come to the parliament, he should be amerced, or otherwise punished, in the manner as was accustomed to be done in the said case in times past.”

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Sheriffs not to be negligent in making returns of writs;

under pain of amercement, &c.

Except this general prohibition of negligence in the statute of *Richard*, and the monition contained in the clause directed by the stat. 7 Hen. 4, c. 15, (a) to be inserted in the writ (b), there was at first no positive regulation with respect to the time of making the return. And these injunctions of the law were too vague to be in any great degree effectual.

Nor did the stat. 8 Hen. 6. c. 7. (c) contain any specific enactment upon this head, although it recited “ that divers sheriffs of the counties of the realm of *England*, for their singular avail

“ be bound and of old time  
“ were wont to come to the  
“ parliament, he shall be  
“ amerced, or otherwise pu-  
“ nished, in the manner as was  
“ accustomed to be done in  
“ the said case in times past.”

(a) For this statute, see *ante* 529, 530.

(b) For the form of the writ, see *App.* vi. ix.

(c) For this statute, see *post*, 767.



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and lucre, had not made due elections, nor in convenient time."

But the period within which the return of the writ is to be made, whether at a general election, or at an election upon a vacancy, has been since more accurately defined.

Within what time returns of writs were to be made by 10 & 11 W. 3, c. 7.

The stat. 10 & 11 W. 3. c. 7, § 1 (a), re-

(a) The stat. 10 & 11 W. 3. c. 7. "*An act for preventing irregular proceedings of sheriffs and other officers, in making the returns of members chosen to serve in parliament.*" [A. D. 1699.]

"For preventing abuses in the returns of writs of summons for the calling and assembling of any parliament for the future, or writs for the choice of any new member to serve in parliament, and to the end such writs may, by the proper officer, or his deputy, be duly returned and delivered to the clerk of the crown, to be by him filed according to the ancient and legal course; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by authority of the same, that the sheriff, or other officer having the

execution and return of any such writ which shall be issued for the future, shall, on or before the day that any future parliament shall be called to meet, and with all convenient expedition not exceeding fourteen days after any election made by virtue of any new writ, either in person or by his deputy, make return of the same to the clerk of the crown in the high court of chancery, to be by him filed, and the sheriff, or other person making such return, shall pay to the said clerk of the crown the ancient and lawful fees of four shillings, and no more, for every knight of a shire, and two shillings, and no more, for every citizen, burgess, or baron of the cinque ports, returned into the said court to be by him filed; and the said sheriff or officer shall, by virtue of this act, charge the same to his majesty, his heirs or



quired the sheriff, or other officer having the execution and return of any writ, on or before the day of meeting of any new parliament, either in person or by deputy, to make return of the writ to the clerk of the crown in chancery. This provision would apply to general elections only; but, by the same clause, the return was to be made with all convenient expedition, not exceeding fourteen days after *any* election made, by virtue of any new writ.

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The same statute, by § 3 (*a*), makes sheriffs, or other officers, not making returns according to the act, liable to a penalty of £500, one moiety to the king, and the other to him or them that will sue, in manner therein.

Penalty on returning officers for disobedience of 10 & 11 W. 3, c. 7.

Neither of the above statutes had reference to

“ successors, and have allowance thereof in his account in the exchequer or elsewhere.” (For § 2 see *ante*, 407, 408.)

(*a*) § 3. “ And it is further enacted by the authority aforesaid, that every sheriff or other officer, or officers aforesaid, who shall not make the returns according to the true intent and meaning of this act, shall forfeit for every such offence the sum of five hun-

“ dred pounds, one moiety whereof shall be to his majesty, and the other moiety to him or them that shall sue for the same, to be recovered by action of debt, bill, plaint, or information, in any of his majesty’s courts of record at Westminster, wherein no essoin, protection, privilege, or wager of law shall be allowed, nor any more than one imparlance.”



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the return to be made by any officer having the execution of a precept.

But the stat. 25 Geo. 3, c. 84, by which the time for making the returns in each instance is further restricted, applies both to elections immediately under a writ, and under a precept, and is alike operative in respect of elections upon a new parliament, as in respect of vacancies during a parliament.

In county as well as borough elections. Return both at elections upon a new parliament, and upon vacancies, to be made forthwith, after close of poll, &c.

That statute by § 1 (a), after directing and limiting the time for taking the poll, and requiring that immediately, or on the day after the final close of the poll, the majority shall be declared, directs the returning officer or officers *forthwith* to make a return.—An exception is then made with regard to the return in case of a scrutiny, which will be the subject of the following section.

Returning officers offending against 25 Geo. 3. c. 84, indictable, &c.

The same statute, by § 13 (b) makes returning officers wilfully offending against, or acting contrary to the true intent and meaning of that act, liable to be prosecuted by information or indictment, as therein directed.

(a) For this clause, see *ante*, 623, 624.

(b) For this clause, see *ante*, 629.



## Sect. 4.

SECTION 4. *Of the time limited by the statute law for making returns to writs and precepts respectively, there being a scrutiny.*

THE provision of the law requiring the return to be made forthwith after the close of the poll, would be inconsistent in the case of a scrutiny; an exception was therefore made for such case, and it was provided for as follows:

1. With respect to elections for knights of shires upon a new parliament:

The stat. 25 Geo. 3, c. 84, § 1 (a), after authorizing the granting a scrutiny, and the proceeding thereupon, qualifies the power given with regard to such scrutiny, with a requisition, that in all cases of a general election, every returning officer or officers, having the return of a writ, shall cause a return of a member or members to be filed in the crown office, on or before the day on which such writ is returnable.

On scrutiny at a general election, return to be filed on or before day on which writ returnable.

With respect to other elections upon a new parliament:

(a) For this clause see *ante*, 623, 634. For the penalty upon returning officers disobeying the act, see *ante* 629, 738.



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In the like case  
return to pre-  
cept to be  
made six days  
at least be-  
fore writ re-  
turnable.

The same clause then proceeds in like manner to require, that in such cases every returning officer or officers, acting under a precept or mandate, shall make a return of a member or members, in obedience to such precept or mandate, at least six days before the day of the return of the writ.

2. With respect to all elections upon vacancies :

On scrutiny at  
any elections  
on vacancies,  
return to be  
within thirty  
days after close  
of poll, or  
sooner.

The above statute, of 25 Geo. 3, c. 84, § 1, further provides, that in case of any election upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted, that a return of a member or members shall be made within thirty days after the close of the poll, or sooner, if the same can conveniently be done. By the tenor of this clause this enactment is evidently intended to reach both county and borough elections (*a*).

(*a*) For a special return of before this act passed, see a scrutiny pending, made *post*. section 9.



SECTION 5. *Of the manner of, and the parties to returns to writs and precepts respectively; of default in these particulars; and how far it will affect returns.*

1. OF the manner of, and the parties to returns to writs or precepts respectively:

The writ is in every case to be returned when executed, together with the return or returns, of the election or elections holden thereunder. This is in conformity to the requisition of the writ itself, as well as to the statutes by which the return is regulated, and which will be presently adverted to.

The returns were originally made by a schedule attached by the sheriff to the writ naming the persons elected throughout the whole county, and their manucaptors (a).

1 Peck, 119:  
Returns how  
formerly made.

(a) Prior to the statute 23 Hen. 6, (for which see 396) it is said by *Prynne*, that in some counties it was usual, not only to elect the knights, citizens, and burgesses in the county court, but to return both the knights, citizens, and burgesses' names, in or by one indenture alone, or the knights in one indenture by themselves, and all the citizens and burgesses thus

elected, in and by one indenture, distinct from the knights under the seals of the citizens and burgesses electing them. Brev. Parl. Red. 252. 1 Doug. 451.

The returns of members to parliament in the Tower, begin with 26 Edw. 1., and end with the reign of Edw. 4.—As far as the 7 Edw. 4, they are, by a schedule, as above-mentioned;—from that time



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The returns as well to writs as to precepts or mandates, are now separately made in each instance in the manner and between the parties about to be stated (*a*).

Members for  
one place to be  
returned on  
one indenture.

The practice is, to return both members, where there is an election for two, in the same indenture; and so it is stated to have been formerly, when it was not unusual (*b*) to choose the members at twice (*c*).

It is probable, however, that when this was done, there was some distinction between the

they are by indenture between the sheriff and the returning officer of each city and borough, and according to the 23 *H. 6*, c. 14, (which it seems was not conformed to until some time after it had passed.) From 17 *Edw. 4*. to 1 *Edw. 6*, the returns are all lost, except an imperfect bundle of 33 *Hen. 8*. This and the returns from 1 *Edw. 6*, as far as the restoration, are preserved in the Rolls chapel. From thence in the petty-bag-office, whereunto they are from time to time transmitted from the crown-office. See 1 *Peck*. 118 (*n. d.*) See also 2 *Peck*. 280—400. Of the returns in the crown office, many are testified to have been delivered;—many are upon stamps.

(*a*) It is hardly necessary

to say, that it is an instrument which need not be delivered, and that no stamp is required.

See much curious matter upon the subject of ancient returns, 1 *Peck*. 53, and 4 *Doug.* 156.

(*b*) *Heyw. Co. El.* 380.

(*c*) See *ante*, 574, (*n.*) and 627, and the case of *Chippenham*, 9 April, 1624, 1 *Journ.* 759, and *post.* *St. Edmunds Bury*, 15 and 16 Feb. 1625, one of the members was chosen on the 6th Jan., the other on the 11th; and a question arising afterwards, as to the commencement of the time of privilege of the second member, a member in the debate declared himself against these straggling elections.—1 *Journ.* 819, 820, & *Heyw. Co. El.* 380.



member first elected, and him that was chosen in the second place. It seems that some sort of pre-eminence, of which all trace is now lost, was annexed to the character of first knight or burgess, and for this reason the members were frequently so lately as the beginning of the 17th century elected separately (a).

1. As to the elections for knights of shires:

(a) See Mr. Serjt. *Heywood's* observations upon this subject, where he observes, that if these straggling elections never took place, but upon an adjournment of the election for some good reason, as where there was an equality of voices for all the candidates, or the election of one member was unanimously made, but an equality of votes was supposed to exist between the candidates for the second member's place, there is no reason why, at the adjourned election, any of the voters should be deprived of their privilege of voting, *de novo*. They have been called upon to exercise that privilege, either only in part, or not at all. The statutes by which the poll at county elections is regulated, do not seem to have made any alteration in the ancient system, or to throw any impediment in the way of the sheriff's proceeding, with the consent of the freeholders, to the election of knights of the shire separately, provided

the electors are unanimous in their choice of one of them; or even to take the poll for each of the candidates separately, where they are not so. In the latter case, indeed, he might find it difficult to complete the polls for all the candidates within the time limited by the late statute; and, as he could hardly, without some corrupt motive, wish to protract the election, and lengthen his own attendance, he might reasonably expect to incur the displeasure of the house of commons. In the former case of the electors being unanimous in their choice of the first knight, one very great convenience would follow from proceeding separately to the election of the other; for it is a circumstance of great hardship, that he, whom all are unanimous in electing, should be obliged to go through the fatigue and ruinous expence of a contest because it is disputed only who it is, to be his colleague. See Co. El. 381.



## Sect. 5.

Parties to the indenture of return of knights of the shire.

Indenture to be under seal, &c.

The return (*a*) is by indenture, under seal between the sheriff, and the electors in conformity to the statutes 7 *Hen.* 4, c. 15, & 8 *Hen.* 6, c. 7.

By the former of these statutes (*b*), the names of the persons chosen are to be written in an indenture under the seals of *all* them that did choose them. By the latter statute (*c*), the indenture is to be between the sheriff and the choosers.

In early times, when the county court was attended by a few suitors only, there would have been no inconvenience in all who were the choosers becoming parties to the indenture. This would be quite impracticable at the present day, from the numbers voting at county elections. The indenture of return is therefore now made between the sheriff on the one part, and a few electors by name, “and many other persons of the county, and electors of the knights to parliament for the said county of the other part;” and this practice seems well warranted under the above statute of *Hen.* 6.

The indenture of return having been executed (*d*), it is in conformity to the stat. 7 *Hen.* 4,

(*a*) For the form of a return, see *App.* xxxv. 767, and see 23 *Hen.* 6, c. 14, (clause 11) 396—398.

(*b*) For this stat. see *ante*, 529.

(*c*) For this stat. see *post*,

(*d*) There ought to be a counterpart of the indenture at all elections. And where



c. 15 (*a*), to be tacked to the writ; the execution of the writ being at the same time indorsed upon the back of that instrument (*b*). The two together are then returned into chancery, as already stated (*c*).

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Indenture to be tacked to the writ; writ to be indorsed, and both returned.

As to elections for other places:

It will be recollected that these elections are holden under a precept or mandate.

The stat. 23 Hen. 6, c. 14 (*d*), after directing the making out and delivery of the precept for the choice of citizens and burgesses, ordains that the mayor and bailiffs, or bailiffs or bailiff, where there is no mayor, shall return the precept to the sheriff, by indenture to be made between the sheriff and them, of the election and of the names of the citizens and burgesses chosen.

Parties to indenture of return of citizens and burgesses.

the principal indenture had been stolen, the counterpart was holden sufficient. *Liskeard*, 19th November, 1740. 23 Journ. 535, 536.

(*a*) For this stat. see *ante*, 529.

(*b*) For this indorsement, see *App.* viii.

(*c*) One of the irregularities pointed out in the recital of the stat. 23 Hen. 6, c. 14, is that sometimes the sheriffs had not returned the

writs, but imbesiled them. See *ante*, 397.

The day or days of election are not always truly stated in the ancient indentures of return. They sometimes stated the election to have taken place on a particular day, when perhaps it was made on two days, and both different from that mentioned in the return. 2 Lud. 293.

(*d*) For this stat. see *ante*, 397, 398.



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Indenture to  
be

It may be proper to observe that in many places there are returning officers, who do not fall within the description of those mentioned in the statute, but that the practice is nevertheless the same; the sub-return, or return to the precept, being by indenture under seal (*a*), between the sheriff and the officer holding the election, whoever he may be (*b*).

Where there is a common seal, it is customary to have that only affixed or annexed, in which case the indenture should purport that "the mayor, &c. have set the common seal of the place, acknowledging that to be their seal." If there be no common seal, the returning officer, and electors, where any are parties to the indenture, seal severally.

Usage in some  
places for elec-  
tors to join, but  
not necessary.

In some places it has been usual for some of the electors to join in the indenture of return to the precept, in addition to the returning officer. It should seem however that the statutes not re-

(*a*) There should be a counterpart. See *ante*, 744. (*n. d.*).

For the form of a return to a precept. *App.* xxxviii.

(*b*) The returns in the crown office appear, in some instances, to have been very incoherently and informally made, varying in many particulars, at the different

boroughs. It seems, however, that in all of them, the intention has been to make the return in manner above stated.

There have been elections in which women have joined in making the return. *Gatton*, March 26, 1628. 1 *Journ.* 875. *Aylesbury*, 14 *Eliz.* *Male*, 242. n.



quiring the electors to be parties to the indenture, no usage can render it necessary for them to become so.

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The precept is to be returned (*a*) in conformity to the usual requisition in that instrument, together with the return; the execution of the precept being indorsed thereupon by the officer acting under it (*b*).

Precept to be returned being indorsed.

With regard to elections for knights of the shire in the counties palatine.—The return into chancery not being immediate by the sheriff, he indorses the writ sent to him; and there is another indorsement (*c*) on the part of the officer, to whom the writ was directed in the first instance (*d*), upon the return of the writ to him which he had sent to the sheriff.

Indorsements of writs for election of knights in counties pa-

With regard to elections for places being

(*a*) It seems from the case of *Mead v. Robinson*, M. T. 17 Geo. 2. that although the precept is returned in the first instance to the sheriff, yet it is not necessarily to accompany the return of the writ to the crown office. At least, that case establishes, that the precept is not considered, so of course to be recorded in chancery, as to exclude the propriety of producing the original, and to make a copy proper evidence, where in fact the precept is not returned. Willes's Rep. 422, and *ante*, 409.

Upon examining several of the returns under precepts, in the crown office, it appears that the practice varies. In some instances the precept is returned thither as well as the writ; in others not. The more regular way seems to be to return the precept.

(*b*) For this indorsement, see *App.* xii.

(*c*) For such an indorsement, see *App.* xxxvii.

(*d*) For the persons to whom the writs in the counties palatine are directed, see *ante*, 349.



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Indorsement of  
precepts at  
other elections  
for places in  
counties pala-  
tine.

counties and for cities and boroughs in the counties palatine; or, for the cinque ports:—In each of these cases, as the return is made through the same channels, through which the authority for holding the election passed, the instruments delegating such authority, ought to have corresponding indorsements, by each officer through whose hands they retrace their steps to the source from whence they emanated (*a*).

2. Of default in these particulars, and how far it will affect returns :

Penalty for  
default, &c.

The statutes do not specifically affix any penalties to the non-performance, of what is stated in this section, to be required by them. But in some of these there are provisions against disobedience to such statutes generally, which might attach. The party refusing or neglecting to do his duty would be likewise responsible to the house of commons; and it is always to be remembered, that the violation of an act of parliament is of itself indictable.

Returns not to  
be impeached  
for defect of  
form.

It is now to be considered how such default may affect the return.

It seems that with regard to the validity of the return, it will not be impeached for any defect in form, so as to destroy its efficiency, provided it be not defective in substance, or irreconcilably repugnant.

(*a*) See *App.* xxxvii.



It was resolved in the case of *Pontefract*, 21 Jac. 1. “that if a man be duly elected, and yet not well returned, he cannot sit in the house until the return be amended; for a good election is only a good ground to amend an undue return, but not to admit the party without a good return.” It was also resolved, “that if the return of the borough to the sheriff, or of the sheriff over to the court, have substance, it shall not be impeached for any want of form or surplusage in matter.”

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Glanv. 136.  
and 137.

It was resolved in the same case, that “if the return be absolutely and irreconcilably repugnant, then the same is utterly void; as if the same parties, by several indentures of the same date, do return two several persons to be burgesses, in one and the same manner, and for one and the same place, to the sheriff, and he in the like manner do equally and without distinction return them over to the court; in such case, neither of the parties so returned are to be admitted into the house till the return be amended.”

Glanv. 137.  
Where two  
irreconcilable  
returns, in-  
stead of one,  
both void.

Upon this principle trifling irregularities (a)

Irregularity as  
to the seal will

(a) Glanville, 133. *Pontefract*, 21 Jac. 1. There was one return by the mayor, aldermen, and burgesses, of Sir John Jackson, having a large seal, and subscribed by more than forty persons. There was another return by other aldermen and burgesses of Sir Richard Beaumont, signed by fifteen aldermen and burgesses, and having their seals. The committee decided, and the house resolved, that Sir John Jackson might well come into the house upon the former return, and he was admitted.



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not vitiate re-  
turn.

with respect to the sealing, provided there be a seal, have not vitiated the return. Thus a return with another seal, where there has been a common seal which ought to have been used, has been admitted (*a*).

9 Journ. 581.  
(Post. 759.)

This is to be inferred from the case of *Ilchester*, 1st April, 1679, where the return which was adopted had a private seal, and that which was rejected (upon another ground,) had the common seal of the borough.

8 Journ. 642.  
Original in-  
denture should  
be returned.

The original indenture ought to be returned. *Plympton*, October 27, 1666, where both the undersheriff of the county of *Devon*, and the returning officer of the borough, were sent for, in the custody of the serjeant of arms, for making an improper return, one of the causes of the displeasure of the house was that the original indenture was not returned, but only a pretended counterpart.

Material that  
the indenture  
should be be-  
tween the  
proper parties.

It is a principal point that the indenture should be made between the proper parties, inasmuch as in many cases where there have been

But upon petition of certain electors, the election was adjudged void upon another ground.

(*a*) In the case of *Bridge-water*, 1st April, 1679, there were two returns, each having a seal of the borough, but in

one of them it was a larger common seal of the borough; in favour of which latter the decision was, but it seems rather to have been made upon the general merits of the election. 9 Journ. 580.



two returns, one by indenture executed by the returning officer, and another not so, that which has been so executed has been considered as the valid one, and acted upon, notwithstanding the existence of the other.

Such were the following cases.—*Northampton*, 9 Journ. 537.  
11th November, 1678. One indenture was returned, which was not signed by the mayor, nor had it the seal of the corporation affixed to it; another was signed by the mayor, and had the seal of the corporation. It was resolved by the house that the former was not a sufficient return, but that the latter was a due return, and the sheriff was ordered to take off the one which was annexed to the writ, and to annex the other.

*Montgomery*, 1st April, 1679 (a). There 9 Journ. 580.  
were two returns, one between the sheriff, both bailiffs, and many burgesses, and with seals; the other between the sheriff and many bur-

(a) There were two indentures; one between the sheriff of the one part, two bailiffs and many burgesses of the other part, and signed by both bailiffs and many burgesses. It had a large seal against the bailiffs names, and a seal to each of the burgesses names. The other indenture was between the sheriff of the one part, and many burgesses of the other

part, signed by many of the burgesses, but not by either of the bailiffs, and had no seal. The committee resolved, and the house agreed, that the first indenture was well and duly returned, and by the proper officers, and that the member thereby returned ought to sit in parliament as well returned for the said borough.



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gesses, but not executed by either of the bailiffs, and without a seal. The former was adopted.

9 Journ. 580.

*Brecon*, 1st April, 1679 (*a*). One return was between two aldermen and many others, burgesses of the borough, by whom it was signed and sealed, and the sheriff; another was between the sheriff and the bailiff, and had the common seal and their private seals. The latter was adopted.

9 Journ. 580.

*Dover*, 1st April, 1679 (*b*). One return was

(*a*) There were two indentures between two aldermen and many others, burgesses of the borough of the one part, and the sheriff of the other part. It was signed by the aldermen and burgesses, and had their seals. The other was between the sheriff and the bailiff. It was signed by the bailiff and by burgesses, and had both the common seal and their private seals. The committee resolved, and the house agreed, that the latter indenture was well and truly returned, and by the proper officer, and that the member thereby returned ought to sit.

(*b*) There was one indenture between the lieutenant of *Dover* Castle and the mayor, jurats, and commonalty of the town and port of *Dover*, of the other part, (by which Mr. *Stokes* and Mr. *Papillon* were returned,) to which the common seal was affixed. There was another

writing, purporting an indenture, (but made between nobody,) witnessing that "we the mayor, jurats, and barons of the town and port of *Dover*, in a full hundred there, that is to say, G. W. deputy-mayor, J. V. and A. W. jurats, and five of the common council, and ten others styled barons of the said port, have chosen *Thomas Papillon*, gentleman, and *John Strode*, Esquire, our combarons. In witness whereof, we the mayor, jurats, and barons of the port aforesaid, have put our hands and seals." It was subscribed by G. W. deputy-mayor, and seventeen others, and eighteen seals were affixed at the bottom. The committee resolved, and the house agreed, that the first indenture was well and truly returned, and by the proper officer, and that the members thereby returned, ought to sit.



by indenture between the lieutenant of *Dover* Castle and the mayor, jurats, and commonalty of the town and port of *Dover*; another return was by a writing purporting to be an indenture, (but made between nobody,) certifying the choice of the mayor, jurats, and barons of the town and port of *Dover*. The former had the common seal; the latter was subscribed by the hands and seals of the deputy-mayor, and seventeen others. The former was adopted.

*Ilchester*, 1st April, 1679 (*a*). One indenture 9 Journ. 581. was between the sheriff and nine capital burgesses, with the common seal affixed; another between the sheriff, bailiff, burgesses, and inhabitants. It had one seal, which did not appear to be a common seal, and over this was the bailiff's name. Two burgesses signed, but there did not appear to be any seal of theirs. The latter was adopted.

(*a*) One indenture was between the sheriff and E. P. and eight others, capital burgesses. It had the common seal affixed, but the bailiff was no party, nor had set his hand or seal to it. Another was between the sheriff and the bailiff, burgesses, and inhabitants. In witness whereof the "bailiff or his deputy, together with the burgesses, put their hands and seals." It had one seal which did not appear to be a common seal, and the bailiff's name was over it. Two burgesses signed, but there does not appear to have been any seal of theirs. The committee resolved, and the house agreed, that the latter indenture was well and truly returned, and by the proper officer, and that Mr. *Strode* and Mr. *Speke* who were returned thereby, ought to sit. 9 Journ. 581.



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15 Journ. 232.  
235. 242. 252.

*Clitheroe*, 13th, 14th, 20th, 23d January, 1706. One of the bailiffs returned Mr. *Parker*, the other bailiff returned Mr. *Harvey*. The former return was between the sheriff and one bailiff, together with the other burgesses, and had the common seal affixed thereto; the other purported to be between the sheriff on one part, and both the bailiffs, together with the other burgesses, on the other part. Mr. *Harvey*, who was returned by the latter, was declared to be duly returned.

19 Journ. 701.  
705.  
S. C. ante, 406.  
447.

*Minehead*, 9th January, 1721. The return being made by the burgesses, and not by the constables, contrary to a determination of the house, 13th January, 1717, a return of another candidate made by the latter was ordered to be annexed to the writ, with leave given to the sitting member to petition; and the burgesses who made the first return were committed.

24 Journ. 13,  
14. 16.

*Bossiney*, 9th and 11th December, 1741. The mayor petitioned the house, stating that the sheriff, instead of delivering to him the precept, gave it to the last mayor, who returned the sitting member as duly elected; that the petitioner, who was the proper officer, returned *John Sabine* and *Christopher Tower*, Esquires, who were duly elected; but that the sheriff refused to receive his return. The house ordered that the return,



signed by the petitioner, should be annexed to the writ.

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*Wells*, 20th January, 1766. There were two returns; the return made by the proper officer was annexed to the writ, and the member otherwise returned had liberty to petition (*a*). 30 Journ. 466. S. C. ante, 449. 455.

The return ought be made by the legal returning officer. There have been instances, indeed, as before stated, where the house has adopted returns from other persons; but these have been rare, and only under particular circumstances (*b*). (*Ante*, 449.)

(*a*) The decision in the following case turned upon its own peculiar circumstances, and could only become material in the event of the precept being improperly delivered.—*Minehead*, 23d May, 1717. There had been two precepts sent to the borough, and there were two returns, one by the burgesses and electors of the borough, the other by the commonalty of the borough. The committee resolved, and the house agreed, that a return not signed by a burgess to whom the precept had been delivered was an undue return, and that a return signed by him and other burgesses was a due and sufficient return. 18 Journ. 543. 555. 565. S. C. ante, 405. (n.)

cept was directed to and executed by the mayor under the new corporation; and Lord *Caermarthen* and Mr. *Owen* were returned by him. Six of the old corporation proceeded to make another election by themselves, at which *Richard Johns*, one of them, presided, and he made a return of Mr. *Yorke* and Mr. *Cust*. The sheriff annexed to the writ the return made by the mayor, but sent the other up to the crown office, where it was rejected. The committee decided (upon the right of election,) that Mr. *Yorke* and Mr. *Cust* were duly elected; and the indenture of return executed by *Johns* and others with him was annexed to the writ. 2 Doug. 1.

(*b*) *Helleston*. The pre-



## Sect. 6.

SECTION 6. *Of the principle upon which returns are to be made, and herein how far the returning officer is bound by the poll-book.*

Cases where proceedings so irregular as that majority not ascertainable; elections void. 8 Journ. 62.

8 Journ. 106.

8 Journ. 414.  
32 Journ. 30.  
756.

IT formerly happened in some instances, that the proceedings were so irregular, that it was impossible to ascertain which of the candidates had the majority of votes; and where, in consequence, the elections were holden to be void. Such were the cases of *Camelford*, 12th June, 1660 (a). *Coventry*, 31st July, 1660 (b). *Northampton*, 26th April 1662 (c); and *Pembrokeshire*, 10th Nov. 1768, and 6th March, 1770 (d). It is

(a) A double return, and the committee was of opinion that "the poll was not duly taken," and the election void. The house agreed, and ordered a new writ.

(b) The committee reported, that the persons concerned in the said election were very numerous, and divers names were doubly polled, and some names entered of strangers and persons unknown, as also of almsmen and others, that pay not scot and lot; and the cases were found so various and perplexed, that, after several sittings, the committee could make no considerable progress therein; and that, in regard of the great uncertainties that fell out in the several cases, as well the persons returned, as the petitioners, declared themselves

content that the former election should be set aside; and that the committee was therefore of opinion, that the former election should be set aside. To which resolution the house agreed.

(c) The committee reported that there were several persons who had a right to vote, that did demand to poll, and were denied it; and that the matter was so intricate that the committee could not determine what the number was of those who had a right to give their voices, and were denied the poll, and therefore that the election was void; and the house agreed.

(d) The sheriff was complained of because he appointed several attornies, friends to the sitting members, as deputies to deter-



to be presumed, however, that, under the now existing legal regulations, the heavy penalties in many instances, and the impending displeasure of the house in all cases of wilful misconduct, whether coming under the provisions of any statute or not, such circumstances, unless perhaps in cases of riots, are not very likely to occur.

Presuming, therefore, the poll or scrutiny to have been regularly closed, and the queried votes (if any,) to have been disposed of; the returning officer is thereupon to make his return; and this is to be done according to the numbers as they stand upon the poll-book.

Return to be made according to numbers on the poll-book,

It seems that whether select committees may or may not admit evidence to correct or supply the poll-book, the returning officer in making

mine the legality of votes, which deputies were not sworn to do indifferent justice between the parties, and acted partially, &c. and when desired himself to attend, he wholly absented himself till the poll was just finished, when he refused to hear objections, and denied a scrutiny.—6th March, 1770, Resolved, that the high sheriff having presided at the election, and taken the oath, &c. and having appointed deputies in several booths, who, during the poll, decided in his absence on the legality of a very great number of votes,

and having, in some instances, refused to take into consideration their decisions, although he was requested so to do, and complaint was made to him of the partiality of the said deputies; and having absented himself from the place of polling during a great part of the time the poll was taking, by means whereof it became *impossible for him to form a certain judgment which had the majority of votes*, acted illegally and partially, with a view to serve Sir R. Philips, and is guilty of a great breach of his duty as returning officer.



## Sect. 6.

Mistakes on the poll-book not to be corrected unless instantly pointed out.

his return ought to abide by the votes as therein entered; nor will he be justified in making any alterations in the poll-book as to votes, or in correcting any alleged mistakes, unless pointed out instantly upon their occurring (*a*). More-

(*a*) I do not find any express authority authorizing the correction of a mistake in giving a vote. But it should seem in reason that where a vote has been pronounced evidently in a mistake, and the voter applies to correct it forthwith, and before it is entered, the returning officer, if satisfied that he is acting honestly, ought to permit him so to do.

*Malden*, 14th December, 1699. Sir *Eliab Harvey*, *Montague*, and *Fitch*, were candidates, one *Leez* deposed that he intended to have voted for *Harvey* and *Fitch*, but gave his vote by mistake for *Harvey* and *Montague*, being disturbed by the falling of his hat. His vote was accordingly set down, and he went to the hall door, and was whispered by two or three, whereupon he returned and would have retracted his vote for Mr. *Montague*. A dispute arising, a query was put opposite his name with consent of all. It appeared that another person had voted, and his name had been taken down before he offered to retract. The petitioner, *Fitch*, insisted that *Leez* should be added to his poll. No ex-

press decision as to the vote was made, but the sitting member was resolved to be duly elected, and the house agreed, 171 to 96. 13 Journ. 63.

*Bewdley*, 23d Feb. 1705. Two voters, having voted for a candidate who afterwards declined, voted again for another candidate. It seems their latter votes were disallowed.

At the election for *Lewes* in 1812, Mr. *Kemp*, Mr. *Shiffner*, and Mr. *Scarlett* were candidates, a voter who intended to give his vote for Mr. *Shiffner*, being asked at the poll for whom he voted, answered for Mr. *Kemp* and Mr. *Scarlett*; Mr. *Scarlett* who was present at the time, thanked him. Upon which, with great apparent agitation, (such as to make it highly probable that he had made a mistake in pronouncing the names,) the voter declared that his intention was to have voted for Mr. *Shiffner* instead of Mr. *Scarlett*. The returning officer, however, (who was assisted by a gentleman of the bar,) would not permit the voter to retract what he had said; and the vote was recorded for Mr. *Scarlett*. But this decision



over, in that case he ought to be well satisfied that no fraud is practised upon him.

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It will not in any way affect the election, that persons really intitled to vote, but being under an impression that they have no such right, depart without polling, unless there be some fraud or practice by the candidate, or some other on his part. Such is the language of the fourth resolution in the case of *Cirencester*, 21 May, 1624 (a).—And as to voters continuing present, and not voting at all, they virtually acquiesce in the election made by those who do.

Immaterial that electors have departed without polling, under mistake of right of election.

Glanv. 108.  
See per Lord Mansfield in *Oldknow v. Wainwright*.  
2 Bur. 1021.

was generally considered in *Westminster-hall* to be an erroneous one.

(a) The right of election was disputed, and having been supposed to be in the freeholders only was demanded, and the poll being so demanded and granted, some of the inhabitants (in whom the right of voting was decided to be) went away without polling. Upon this the fourth resolution of the committee was, that “the going away of some inhabitants, who had a voice in the election, before they were polled, did not impeach the election. For that it appeared not, that they went away through any fraud, or practice of Sir *William Master*, (who was returned) or any other on his behalf, but ra-

ther through their own ignorance, in mistaking the law, who should be electors; for the opinion delivered by counsel learned, the agreement of the competitors, and the declaration of the under-sheriff, could not any wise be supposed of malice, or ill-meaning, and then *ignorantia juris non excusat*. Wherefore, if some electors did withdraw themselves thinking they had no voice, whereas indeed they had, this was nothing to the purpose, but as if they had never come to the place, or departed of their own accord, before the election finished. In which case the electors so departing, lose their voices; but the election subsequent, is not thereby prejudiced.”



## Sect. 6.

Return to be made according to numbers on the poll-book.

8 Journ. 70.  
Ib. 87.  
16 Journ. 93.  
109.  
24 Journ. 91.  
Ib. 98.  
25 Journ. 565.  
743.  
29 Journ. 17.  
111. 114. 138.  
32 Journ. 26.  
55. 83. 89. 95.  
103. 107.  
33 Journ. 69.  
157. 163.

That the returning officer is to govern himself entirely by the poll-book appears from a variety of cases, where the return having been made contrary to the numbers thereupon, the house has ordered it to be amended in the first instance, according to such numbers, suspending all other questions touching the merits of the return until that were done. *Scarborough*, 21 June, 1660 (a); *Cornwall*, 12 July, 1660 (b); *Steyning*, 5 and 15 Feb. 1708; *Denbighshire*, 23 Feb. 1741 (c); *Colchester*, 15 Dec. and 26 Feb. 1741; *Northumberland*, 14 March, 1747, and 14 Feb. 1748; *Litchfield*, 17 Nov. 1761, 21 and 22 Jan. and 1 Feb. 1762; *Cumberland*, 10 and 22 Nov. and 1, 6, 8, 13, and 15 Dec. 1768; *New Shoreham*, 17 Dec. 1770, and 12 and 14 February, 1771 (d). In many of these cases the returning officers were censured by the house for making unwarrantable returns; and in some committed to custody. It is true, however, that there have been a few instances (e),

(a) The returning officer was sent for in custody.

(b) The returning officer was censured.

(c) The returning officer was committed.

(d) The returning officer was committed to custody, and reprimanded.

(e) *Norwich*, 2 and 3 Nov. 3 and 6 Dec. 1705, was a double return of four candidates, viz. Mr. Bacon, Mr.

*Chambers*, Mr. *Blofield*, Mr. *Palgrave*, upon a doubt by the returning officer, whether the two candidates, at the head of the poll were eligible. The house went into the merits of the election, and decided that Mr. *Bacon* and Mr. *Chambers* were duly elected. 15 Journ. 11. 13. 51. 55. and *ante*, 466.

*Okehampton*, 2 Nov. 20, Dec. 1705. A double return;



in which this course has been departed from, and the merits of the return and of the election have been gone into together, although the return was inconsistent with the numbers on the poll-book.

The return ought to be positive and unconditional (a).

Return not to be conditional:

*Beeralston*, 28 April, 1640.—*Mr. Strood*,

*Mr. Dibble*, in his petition stated himself and *Mr. Northmore* to have been duly elected and returned, but that the mayor, by a contrivance, had been surprized into signing another return, of *Sir Simon Leach* and *Mr. Northmore*. *Sir Simon Leach* petitioned against the return of *Mr. Dibble*; and the returning officer complained of the artifice by which he was induced to sign *Mr. Northmore's* return. 15 Jour. 10.72.

*Flint*, borough, 31 Jan. 1734; 24 March, 1736. *Sir John Glynn*e stated in his petition that he had been duly elected; that the returning officers were in the interest of *Sir George Wynne*, &c., that at the close of the poll the petitioner had a majority of twelve, and that on casting up the poll, the numbers were so declared and published; yet the returning officer, without setting aside any of the petitioner's votes, had returned *Sir George Wynne*. A motion that the

counsel for the sitting member should be directed to proceed, in order to justify the return before the merits of the election were proceeded upon, was negatived. 22 Journ. 338. 823.

So in the case of *Shoreham*, 3 and 15 Dec., 1770. The returning officer reduced the numbers by striking off queried votes, and returned *Mr. Purling*, who had the smaller number upon the poll, alleging that so many of the voters for *Sir Thomas Rumbold* had been bribed as to give *Mr. Purling* the majority. 33 Journ. 38. 70. And see 2 Peck. 370.

(a) In the 15 Edw. 2, a return was made by the mayor and commonalty of *Lincoln*, of two members to serve for that city, and of a third to serve in the room of one of those at first elected, whom they could not compel to attend the parliament. Brev. P. Red. 277. Heyw. Co. El. 429.



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2 Journ. 14.  
Heyw. Co. El.  
377.

Mr. *Harris*, and Sir *Ananias Meredith*, were all returned. Upon the day of election, viz. the 16th March, Mr. *Strood*, Mr. *Slainy*, and Mr. *Wise* (a), were competitors; and it should seem that it was agreed among the voters, present, twenty-six in number, that if either Mr. *Slainy* or Mr. *Wise* should be returned knight of the shire for either the county of *Devon* or *Cornwall*, Mr. *Strood* should be a burgess for *Beeralston* in his room;—and the election was adjourned to the 27th of March following, to be completed. In the mean time, *Wise* was elected knight of one of the above counties, and what became of Mr. *Slainy* does not appear; perhaps he also had been elected a knight of one of the shires; for on the 27th of March, the candidates were Mr. *Strood*, Sir *Ananias Meredith*, and Mr. *Harris*. Mr. *Harris* had then seventeen votes, Sir *Ananias Meredith* twelve, and Mr. *Strood* but six. The committee of privileges reported that the election of Mr. *Strood* was completed on the first day; and without condition. Mr. *Wise* and Mr. *Slainy* had declared both before and after the election, that if either of them were knights of the shire, Mr. *Strood* should have the first place as a burgess. It was objected that his indentures had been last returned; but “priority in the return of indentures worketh no disadvan-

(a) In the entry in the Journal, the name is sometimes *Wilde* instead of *Wise*.



tage to him that comes last (*a*);” so it was voted that the first election (of Mr. *Strood*) was good, and without any condition, and Mr. *Harris* sworn without any exception. It was ordered that Mr. *Strood* should be admitted to come into the house, and “declared that no conditional election ought to be allowed.”

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The only exceptions to this proposition are in some few instances, which will be mentioned, as being proper for special or double returns. *Post*, sect. 9, & 11.

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SECTION 7. *The making of due returns, how enforced by the statute law, and the law of parliament.*

1. SOME of the material requisites of the law with regard to the making of due returns have been already detailed; it is now proposed to advert to those statutes, which more specifically secure to the public, and to persons elected, the return of those who are legally chosen. The law of parliament upon the same head will be also considered.

The remedy to the person grieved by an undue return, will form the subject of a separate section. (*post*, sect. 12)

(*a*) These are the words of the Journal; whether there was any resolution of the house, or committee, or whether they were taken down by the clerk, as part of the debate, or as the admission of all parties, does not appear.



## Sect. 7.

Justices of  
assize to in-  
quire into re-  
turns made.

Sheriffs mak-  
ing returns  
contrary to  
7 H. 4. c. 15,  
to forfeit  
£100.

## As to returns to writs:

The stat. 11 Hen. 4, c. 1 (*a*), reciting the stat. 7 Hen. 4, c. 15 (*b*), and that in that statute “no penalty was ordained or limited in special upon the sheriffs of the counties if they make any returns to the contrary of the same statute; ordained that the justices assigned to take assizes should have power to inquire in their sessions of assizes of such returns made; and that if it should be found by inquest and due examination before the same justices, that any such sheriff had made, or thereafter should make any return,

(*a*) The stat. 11 H. 4. c. 1.  
“The penalty on a sheriff for  
“making an untrue return of  
“the election of the knights of  
“parliament.” [A. D. 1409.]

“First, Whereas in the  
“parliament holden at West-  
“minster, the seventh year  
“of the reign of our said  
“lord the king, there was  
“ordained and established  
“by a statute for the pre-  
“servation of the liberties  
“and franchises of the elec-  
“tion of the knights of the  
“shire used through the  
“realm, a certain form and  
“manner of the election of  
“such knights, as in the  
“said statute more fully is  
“contained: (2) and foras-  
“much as in the same statute  
“no penalty was ordained or  
“limited in special upon  
“the sheriffs of the counties,  
“if they make any returns

“to the contrary of the same  
“statute, (3) it is ordained  
“and stablished, That the  
“justices assigned to take  
“assizes, shall have power to  
“inquire in their sessions of  
“assizes, of such returns  
“made; (4) and if it be  
“found by inquest, and due  
“examination before the  
“same justices, that any  
“such sheriff hath made, or  
“hereafter make, any re-  
“turn contrary to the te-  
“nor of the said statute,  
“that then the same sheriff  
“shall incur the penalty of  
“one hundred pounds to be  
“paid to our lord the king;  
“(5) and, moreover, that the  
“knights of the counties so  
“unduly returned, shall lose  
“their wages of the parlia-  
“ment, of old time accus-  
“tomed.”

(*b*) For this stat., see *ante*,  
529.



contrary to the tenor of the recited statute, he should incur a penalty of £100 to the king; and the knights unduly returned should lose their wages.

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Knights unduly returned to lose their wages.

It seems that the legislature considered that the sheriffs and knights, who might become responsible under the above statutes, were not sufficiently protected with regard to any defence they might have; and, therefore, provided as follows: (It is difficult, however, under our present notions of the administration of justice to see the necessity of such provision.)

The stat. 6 Hen. 6, c. 4. (a), recites the two before-mentioned statutes of the 7 and 11 H. 4,

(a) The stat. 6 Hen. 6. c. 4.  
 “ *The sheriff’s traverse to an*  
 “ *inquest found, touching re-*  
 “ *turning knights of the shire*  
 “ *for the parliament.*”—[A.  
 D. 1427.]

“ *Item, Whereas it was or-*  
 “ *dained and established in*  
 “ *the 7th year of king Henry*  
 “ *the Fourth, grandfather of*  
 “ *our lord the king that now*  
 “ *is, that knights of shires*  
 “ *for the parliament, should*  
 “ *be chosen in the manner and*  
 “ *form following: that is to*  
 “ *say, at the next county*  
 “ *to be holden after the de-*  
 “ *livery of the writ of the*  
 “ *parliament, proclamation*  
 “ *shall be made in the full*  
 “ *county of the day and place*  
 “ *of the parliament, (2) and*

“ *that all they which be pre-*  
 “ *sent there, as well suitors*  
 “ *duly summoned for this*  
 “ *cause, as other, shall attend*  
 “ *to the election of their*  
 “ *knights for the parliament,*  
 “ *(3) and then in full county*  
 “ *they shall proceed to the*  
 “ *election freely and indif-*  
 “ *ferently, notwithstanding*  
 “ *any request or command-*  
 “ *ment to the contrary; (4)*  
 “ *and that after they be cho-*  
 “ *sen, whether such persons*  
 “ *chosen be present or absent,*  
 “ *their names shall be written*  
 “ *in indentures under the*  
 “ *seals of all the choosers,*  
 “ *and annexed to the said*  
 “ *writ of parliament, which*  
 “ *indenture so sealed and*  
 “ *tacked, shall be holden for*



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and after reciting the latter adds, “to the great mischiefs of sheriffs and knights of the shire which

“the return of the said  
“writ, as to the knights of  
“the said shires; (5) and  
“also in the writs of the par-  
“liament hereafter to be  
“made, this clause shall be  
“put in the manner as fol-  
“loweth: *Et electionem tuam*  
“*in pleno comitatu tuo factum,*  
“*distincte et aperte sub sigillo*  
“*tuo et sigillis eorum qui*  
“*electioni illi interfuerint,*  
“*nobis in cancellaria nostra*  
“*ad diem et locum in brevi*  
“*contentos certifies indilate.*

“(6). And for that in the  
“same statute no pain was  
“ordained, nor specially set  
“upon the sheriffs of the  
“county, if they make their  
“return contrary to the said  
“statute, it was ordained  
“and established the 11th  
“year of the said king Henry  
“the Fourth, That the jus-  
“tices of assizes should  
“have power to enquire in  
“their sessions of assizes, of  
“such returns made; (7)  
“and if it be found by in-  
“quest and due examination  
“before the said justices that  
“any such sheriff hath made  
“or hereafter shall make any  
“return contrary to the te-  
“nor of the said statute, that  
“the same sheriff should in-  
“cur the pain of £100, to  
“be paid to our said lord the  
“king, (8) and, moreover,  
“that the knights so unduly  
“returned, shall lose their  
“wages of the parliament, in

“old times accustomed; (9)  
“to the great mischiefs of  
“sheriffs and knights of the  
“shire, which be forebarred  
“and put out of their an-  
“swer against such inquests  
“of office, taken before the  
“said judges, because of  
“the statute and ordinance  
“aforesaid.”—(10) “Our  
“lord the king willing in  
“this case to provide re-  
“medy, hath ordained and  
“established, that all the  
“knights of the shires, cho-  
“sen for this present par-  
“liament, and the sheriffs of  
“the same counties against  
“whom any inquests or of-  
“fices of undue election be  
“found before the justices  
“of assizes shall have their  
“answer and traverse to  
“such inquests of office  
“taken; (11) and also all  
“the knights from hence-  
“forth so to be chosen, and  
“the sheriffs that shall make  
“such elections, shall have  
“their answer and traverse  
“to such inquests and of-  
“fices before any justices  
“of assizes hereafter to be  
“taken; (12) and the said  
“knights and sheriffs shall  
“not be endamaged unto  
“our said lord the king or  
“his successors, for any  
“such inquest taken, or to  
“be taken, until they be  
“duly convict according to  
“the form of the law.”

11 Hen. 4 c. 1.  
recited.



be forebarred and put out of their answer against such inquests of office taken before the said judges, because of the statute and ordinance aforesaid."

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It then ordained that all the knights then chosen, and the sheriffs against whom any inquests or offices of undue election had been found, and also all the knights from thenceforth to be chosen, and the sheriffs that should make such elections, should have their answer and traverse to such inquests and offices before any justices of assize, thereafter to be taken; and that the said knights and sheriffs should not be endamaged unto the king or his successors for any such inquest until they should be duly convicted according to the form of the law.

Knights and sheriffs against whom inquest of undue election found to have their traverse,

and not to be endamaged till duly convicted.

This statute was soon after followed by that of the 8 Hen. 6, c. 7 (a), which after ordaining the qualifications of the electors of knights of the

Sheriffs returning knights contrary to 8 H. 6. c. 7.

(a) The stat. 8 Hen. 6. c. 7. "What sort of men shall be choosers, and who shall be chosen knights of the parliament."—[A. D. 1429.]

"Item, Whereas the elections of knights of shires to come to the parliaments of our lord the king, in many counties of the realm of England, have now of late been made by very great outrageous, and excessive number of people, dwelling within the same counties of the realm of Eng-

"land, of the which most part was of people of small substance, and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires, dwelling within the same counties, whereby manslaughter, riots, batteries, and divisions among the gentlemen, and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be pro-



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shire, (as well as the qualification of residence in the elected, which has since been altered), and the power of the sheriff to examine an elector upon oath as to how much he may expend by the year, provides that if any sheriff

“ vided in this behalf; (2)  
 “ our lord the king, con-  
 “ sidering the premises, hath  
 “ provided, ordained, and  
 “ established, by authority  
 “ of this present parliament,  
 “ that the knights of the  
 “ shires to be chosen within  
 “ the same realm of *England*  
 “ to come to the parliaments  
 “ of our lord the king here-  
 “ after to be holden shall be  
 “ chosen in every county of  
 “ the realm of *England*, by  
 “ people dwelling and re-  
 “ sident in the same coun-  
 “ ties, whereof every one of  
 “ them shall have free land  
 “ or tenement to the value  
 “ of forty shillings by the  
 “ year, at the least, above all  
 “ charges; (3) and that they  
 “ which shall be so chosen  
 “ shall be dwelling and re-  
 “ sident within the same  
 “ counties; (4) and such as  
 “ have the greatest number  
 “ of them that may expend  
 “ forty shillings by year and  
 “ above, as afore is said, shall  
 “ be returned by the sheriffs  
 “ of every county, knights  
 “ for the parliament, by in-  
 “ dentures, sealed between  
 “ the said sheriffs and the  
 “ said choosers so to be made.  
 “ (5) And every sheriff of the  
 “ realm of *England* shall  
 “ have power, by the said

“ authority, to examine upon  
 “ the evangelists every such  
 “ chooser, how much he may  
 “ expend by the year; (6)  
 “ and if any sheriff return  
 “ knights to come to the par-  
 “ liament contrary to the said  
 “ ordinance, the justices of as-  
 “ sizes in their sessions of as-  
 “ sizes shall have power by the  
 “ authority aforesaid, thereof  
 “ to inquire; (7) and if by  
 “ inquest the same be found  
 “ before the justices, and the  
 “ sheriff thereof be duly at-  
 “ tainted, that then the said  
 “ sheriff shall incur the pain  
 “ of an *hundred pounds*, to be  
 “ paid to our lord the king,  
 “ and also that he have im-  
 “ prisonment by a year,  
 “ without being let to bail  
 “ or mainprize; (8) and that  
 “ the knights for the parlia-  
 “ ment returned contrary to  
 “ the said ordinance, shall  
 “ lose their wages.”

“ Provided always, that he  
 “ which cannot expend forty  
 “ shillings by year, as afore  
 “ is said, shall in no wise be  
 “ chooser of the knights for  
 “ the parliament, (2) and  
 “ that in every writ that shall  
 “ hereafter go forth to the  
 “ sheriffs to choose knights  
 “ for the parliament, men-  
 “ tion be made of the said  
 “ ordinances.”



return knights to come to the parliament, contrary to the said ordinance, the justices of assizes in their sessions of assizes shall have power thereof to enquire; and if by inquest the same be found before the justices, and the sheriff thereof be duly attainted, the sheriff shall incur the pain of £100 to be paid to the king, and a year's imprisonment, without bail or mainprize. And the knights returned contrary to the said ordinance, are to lose their wages.

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If attainted thereof before the justices to forfeit £100, and be imprisoned a year.

Knights so returned to lose their wages.

The statutes which have been just mentioned apply only to the case of elections for knights of the shire; but the stat. 23 Hen. 6, c. 14 (a), is more general. It embraces returns of each description.

That statute after referring (in the third head of its recital) to the stat. 8 Hen. 6, c. 7 (b), and after further reciting (amongst other things) that by force of that statute elections of knights sometimes had been duly made and lawfully returned, until then of late, that divers sheriffs of the counties of the realm of *England*, for their singular avail and lucre, had not made due elections of the knights, nor in convenient time, nor good men and true returned, and sometimes

(a) For this stat. see *ante*, 396.

(b) For this statute, see *ante*, 767.



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made no return of the knights, citizens, and burgesses lawfully chosen; but that such knights, citizens, and burgesses, had been returned which were never duly chosen, and other citizens and burgesses than those which by the mayors and bailiffs were returned to the sheriff; ordained that the recited statutes should be kept at all points.

Sheriffs to make good and rightful returns of writs; and of returns to precepts.

The statute, then, after directing the making out, and the return to the precepts by the 10th head of § 1, ordains that every sheriff shall make a good and rightful return of every such writ, and of every return by the mayors and bailiffs, or bailiffs, or bailiff, where no mayor is, to him made.

Sheriff disobeying 23 H. 6, or other statutes for elections;

liable to the penalty in 8 Hen. 6, c. 7. (See ante, 769.)

and £100, penalty, and costs, to party grieved, and in default of his suing to informer.

By the same statute, every sheriff, at every time that he doth contrary to this statute, or any other statutes, for the election of knights, citizens, and burgesses, to come to the parliament before that time, is to incur the pain contained in the stat. 8 Hen. 6, c. 7, which has been already mentioned, in addition to which he is made liable to the person chosen knight, citizen, or burgess, in his county and not returned, in the penalty of £100, as will presently be seen; and in default of such person grieved suing, any other person shall have his action of debt against the sheriff, his executors, or administrators, to



demand and have the said £100, with his costs spent in that case.

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And by § 2 (a), of the same statute, every sheriff not making a good and true return of elections of knights, is to forfeit £100 to the king, and £100 and costs to him that will sue against him, his executors, or administrators, in manner therein directed.—False returns are further declared to be against law, and prohibited by the stat. 7 and 8 W. 3, c. 7, § 1 (b), which will be noticed in the next section.

Sheriffs not making true returns, liable to penalty of £100 to the king, and £100 and costs to informer.

As to returns to precepts:

The same statute of 23 Hen. 6, c. 14, § 1 (c), has a provision with regard to the returns to precepts, which, for the most part, corresponds with that already mentioned, as to the returns to writs. By this clause, at every time that any mayor and bailiffs, or bailiffs or bailiff, where no mayor is, shall return other than those which be chosen by the citizens and burgesses of the cities or boroughs, he is to incur and forfeit to the king £40, together with a like penalty to the party grieved (of which hereafter); and in default of such party suing, any other person shall have his action of debt against every of the

Mayor, &c. returning other than persons chosen to forfeit £40 to the king,

and £40 and costs to the party grieved, or in default of his suing, to informer. (See post, Sect. 12.)

(a) For this statute, see ante, 400.

(b) *Ibid.* post, 776.

(c) *Ibid.* 396. 399.



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said mayor and bailiffs, bailiffs or bailiff where no mayor is, their executors or administrators, for the said £40, with his costs, in that case expended.

The prohibition of the stat. 7 and 8 W. 3, c. 7, § 1, applies equally to the returns to precepts as to writs.

2. The making of due returns, how enforced by the law of parliament:

It has been shewn, in the preceding matter of this chapter, that the house of commons will interfere with its authority to enforce the making of returns formal and proper in every particular; the cases already given, and more particularly those in the second section, as constituting part of the law of parliament, apply, in principle, generally, and may be taken as equally in point here.

Cases of improper double returns, &c.

Officers making sub-return, and principal return alike responsible to house of commons.

It is proper, however, to add, that a person mediately or immediately instrumental in transmitting an undue return, will be amenable to parliament for any default, and that it is required, not only of the officer holding the election and making his return, but also of the officer making the principal return into the crown-office, that neither of them shall lend himself to any undue practices, whether it be in making,



or in knowingly accepting and forwarding an improper return.

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*Liskeard, 1804 (a).*—At the election Mr. *Huskisson* was chosen by the corporators, (which was consonant to the right of election, acted upon by a select committee, in 1803).—Mr. *Sheridan* was chosen by the inhabitants, paying scot and lot, supposing that to be the right of election. After the election of Mr. *Huskisson* had been declared, but before the returning officer had made out the indenture of his return, two agents of Mr. *Sheridan's* prepared an indenture, purporting to be made between the sheriff, on the one part, and the mayor and burgesses of the borough on the other part, stating that Mr. *Sheridan* had been elected by the mayor and burgesses, and was returned by them. It was sealed with a private seal, and signed by the three corporators, who had voted for Mr. *S.*, and by several of the inhabitants. The two agents of Mr. *Sheridan* carried it to the mayor, requiring him to execute it; which he refused.

59 Journ. 324.

331.

2 Peck, 324.

(a) The precept was addressed by the under-sheriff to the mayor.

At the election Mr. *Huskisson* and Mr. *Sheridan* were candidates;—of the corporators, the former had twenty-one votes, the latter three; but many of the inhabitants paying

scot and lot, tendered their votes for the latter, and were rejected; their names and tenders were however entered on the poll, in order to intitle Mr. *Sheridan* to the seat, in the event of the right of election being holden to be in persons of that description.



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They then carried it to Mr. *Dayman*, the under-sheriff, who executed it on the part of the sheriff. The mayor prepared a return of Mr. *Huskisson*, by indenture, between the sheriff “and the mayor, capital, and free burgesses,” and sent it with the precept to Mr. *Dayman*, who received the same, after he had executed the first indenture; he however executed the last also, and annexed it together with the precept to the writ, and sent both the indentures, with the writ and precept by the hands of Mr. *Burgess*, one of the two agents of Mr. *Sheridan*, above alluded to, to the crown-office, where they were not received till the 17th March. Mr. *Dayman*, at the time of executing the second indenture, observed that it was most probable, that the friends of Mr. *Huskisson* would contest the first, and he also stated that he had been paid handsomely for signing it (a); he said, however, that he wished to act impartially; it also appeared that he had refused to send the precept to the mayor, by the hands of the agent of either party, but had sent it by a messenger of his own. Mr. *Huskisson* petitioned against the conduct of the persons concerned in making the above return of Mr. *Sheridan*. The committee having determined that Mr. *Huskisson* only ought to have been

(a) It appeared that by under-sheriff upon the execution of an indenture of this, he only alluded to the return. gratuity usually paid to the return.



returned: resolved, 2dly, “That Mr. *Dayman*, the under-sheriff, in annexing to the writ the indenture complained of in the petition of Mr. *Huskisson*, acted contrary to his duty, and in violation of the privileges of parliament.”—The house, (7th and 11th June) upon the report of the committee, ordered Mr. *Dayman* to attend at the bar. After he had been heard they came to a resolution similar to that of the committee, and ordered Mr. *Dayman* into the custody of the serjeant at arms. On the 13th July, he was reprimanded by the speaker and discharged.

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SECTION 8. *Of false returns, and the responsibility to the house in respect thereof.*

1. THE statutes 7 Hen. 4. c. 15 (a), and 11 Hen. 4. c. 1 (b), together with the provisions of the 6 Hen. 6. c. 4 (c), also the 8 Hen. 6. c. 7 (d), and the 23 Hen. 6. c. 14 (e), have been pointed out as enjoining and enforcing the making of due returns. These in effect prohibit false returns; but the stat. 7 and 8 W. 3. c. 7, is in

(a) For this statute, see *ante*, 529.

(b) For this statute, see *ante*, 764.

(c) For this statute, see *ante*, 765.

(d) For this statute, see *ante*, 767.

(e) For this statute, see *ante*, 396, 399.



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its terms more precise and specific in such prohibition.

(*Ante*, 756.)

The observance of this latter statute, (varied in its rule only so far as became necessary upon the establishment of the jurisdiction assigned to select committees,) together with what has been stated when treating of the principle upon which the return is to be made, will effectually guide a returning officer so as to prevent his making a false return.

The stat. 7 and 8 W. 3. c. 7 (*a*), enacts and

(*a*) The stat. 7 & 8 W. 3. c. 7. “ *An act to prevent false and double returns of members to serve in parliament.*—[A. D. 1696.]

“ Whereas false and double returns of members to serve in parliament are an abuse of trust in a matter of the greatest consequence to the kingdom, and not only an injury to the persons duly chosen, by keeping them from their service in the house of commons, and putting them to great expence to make their elections appear, but also to the counties, cities, boroughs, and cinque ports, by which they are chosen, and the business of parliament disturbed and delayed thereby:” “ Be it therefore enacted and declared by

“ the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That all false returns, wilfully made, of any knight of the shire, citizen, burgess, baron of the cinque ports, or other member to serve in parliament, are against law, and are hereby prohibited, and in case that any person or persons shall return any member to serve in parliament for any county, city, borough, cinque port, or place, contrary to the last determination in the house of commons, of the right of election in such county, city, borough, cinque port, or



declares that all false returns wilfully made of any knight of the shire, or other member to

“ place, that such return so  
“ made, shall, and is hereby  
“ adjudged to be a false re-  
“ turn.

§ 2. “ And be it further  
“ enacted, That the party  
“ grieved, to wit, every per-  
“ son that shall be duly  
“ elected to serve in parlia-  
“ ment for any county, city,  
“ borough, cinque port, or  
“ place, by such false return,  
“ may sue the officers and  
“ persons making or procur-  
“ ing the same, and every or  
“ any of them, at his elec-  
“ tion, in any of his majesty’s  
“ courts of record at West-  
“ minster, and shall recover  
“ double the damages he  
“ shall sustain by reason  
“ thereof, together with his  
“ full costs of such suit.

§ 3. “ And to the end the  
“ law may not be eluded  
“ by double returns, be it  
“ further enacted, That if  
“ any officer shall wilfully,  
“ falsely, and maliciously  
“ return more persons than  
“ are required to be chosen  
“ by the writ or precept on  
“ which any choice is made,  
“ the like remedy may be  
“ had, against him or them,  
“ and the party or parties  
“ that willingly procure the  
“ same, and every or any of  
“ them, by the party grieved,  
“ at his election.

§ 4. “ And be it further  
“ enacted, That all contracts,  
“ promises, bonds, and secu-  
“ rities whatsoever hereafter

“ made or given, to procure  
“ any return of any member  
“ to serve in parliament, or  
“ any thing relating there-  
“ unto, be adjudged void;  
“ and that whoever makes  
“ or gives such contract, se-  
“ curity, promise, or bond,  
“ or any gift or reward, to  
“ procure such false or  
“ double returns, shall for-  
“ feit the sum of three hun-  
“ dred pounds, one third  
“ part thereof to be to his  
“ majesty, his heirs and suc-  
“ cessors, another third part  
“ thereof to the poor of the  
“ county, city, borough, or  
“ place concerned, and one  
“ third part thereof to the  
“ informer, with his costs,  
“ to be recovered in any of  
“ his majesty’s courts of re-  
“ cord at Westminster, by  
“ action of debt, bill, plaint,  
“ or information, wherein no  
“ essoin, protection, or wager  
“ of law, shall be allowed,  
“ nor any more than one  
“ imparlance.

§ 5. “ And for the more  
“ easy and better proof of  
“ any such false and double  
“ return, be it enacted by  
“ the authority aforesaid,  
“ That the clerk of the crown  
“ for the time being shall  
“ from time to time enter, or  
“ cause to be entered, in a  
“ book for that purpose to  
“ be kept in his office, every  
“ single and double return  
“ of any member or mem-  
“ bers to serve in parliament



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serve in parliament, are against law, and prohibits them.

## False return defined.

The statute then defines what shall be a false return, namely, the return of any member for any county, city, borough, cinque port, or place, contrary to the last determination in the house of commons, of the right of election.

“ which shall be returned or  
 “ come into his office, or to  
 “ his hands, and also every  
 “ alteration and amendment  
 “ as shall be made by him  
 “ or his deputy in every such  
 “ return; to which book all  
 “ persons shall have free ac-  
 “ cess at all seasonable times,  
 “ to search and take true  
 “ copies of so much thereof  
 “ as shall be desired, paying  
 “ a reasonable fee or reward  
 “ for the same: and that  
 “ the party or parties prose-  
 “ cuting such suit, shall and  
 “ may at any trial give in  
 “ evidence such book so  
 “ kept, or a true copy there-  
 “ of, relating to such false  
 “ or double return, and shall  
 “ have the like advantage of  
 “ such proof, as he or they  
 “ should or might have had  
 “ by producing the record  
 “ itself; any law, custom, or  
 “ usage to the contrary not-  
 “ withstanding; and in case  
 “ the said clerk of the crown  
 “ shall not, within six days  
 “ after any return shall come  
 “ into his office or to his  
 “ hands, duly and fairly  
 “ make an entry or entries

“ as aforesaid, or shall make  
 “ any alteration in any re-  
 “ turn, unless by order of  
 “ the house of commons, or  
 “ give any certificate of any  
 “ person not returned, or  
 “ shall wilfully neglect or  
 “ omit to perform his duty  
 “ in the premises, he shall  
 “ for every such offence for-  
 “ feit to the party or parties  
 “ aggrieved the sum of five  
 “ hundred pounds to be re-  
 “ covered as aforesaid, and  
 “ shall also forfeit and lose  
 “ his said office, and be for-  
 “ ever incapable of having  
 “ or holding the same.

§ 6. “ Provided always that  
 “ every information or ac-  
 “ tion, grounded upon this  
 “ statute, shall be brought  
 “ within the space of two  
 “ years after the cause of  
 “ action shall arise, and not  
 “ after.

§ 7. “ Provided also, and  
 “ be it enacted by the au-  
 “ thority aforesaid, that this  
 “ act shall continue for the  
 “ term of seven years, and  
 “ from thence to the end of  
 “ the next session of parlia-  
 “ ment, and no longer.”



This statute, which was at first to be in force only until the then next session of parliament, was further continued for eleven years, and till the end of the then next session, by the 12 and 13 W. 3. c. 5. and was ultimately made perpetual by the 12 Anne stat. 1. c. 15 (a).

The stat. 2 Geo. 2. c. 24 (b), binding the returning officer by an oath (c) to return such

(a) The stat. 12 Anne, stat. 1. c. 15. "*An Act for making perpetual an act made in the seventh year of the reign of the late king William, intituled, An act to prevent false and double returns of members to serve in Parliament.* [A. D. 1713.]

"Whereas in the seventh year of the reign of the late king William the third, an act was made, intituled, *An act to prevent false and double returns of members to serve in parliament*, and was thereby enacted to continue for the term of seven years, and from thence to the end of the next sessions of parliament, and no longer; which act, by another act made in the twelfth year of the reign of the said late king, intituled *An act for continuing a former act to prevent false and double returns of members to serve in parliament*, was enacted, should therefore be in force for and during the term of eleven years, and from thence to the end of the first sessions of the next

parliament, and no longer; which said act has been found by experience to be very useful for the preservation of the rights of the several counties, cities, and boroughs of this kingdom, in the election of members to serve in parliament, and being near expiring:" "Be it therefore enacted, by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the said act made in the seventh year of the reign of the late king William the third, intituled, *An act to prevent false and double returns of members to serve in parliament*, and every clause, matter, and thing therein contained, shall be, and is hereby declared to be in full force, and is hereby made perpetual."

(b) For this stat. see *App.* xiii.

(c) See *App.* xv.



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App. xv. xvi.]

person or persons as shall to the best of his judgment have the majority of legal votes; by § 4 enacted that such votes should be deemed legal votes, which had been so declared by the last determination in the house of commons, which last determination was thereby made final, notwithstanding any usage to the contrary.

Thus continued the law, until the passing of the stat. 28 Geo. 3. which substituted the determination of select committees as to the right of election, for that of the house of commons, where the merits of any petition depend upon such question; and this produced a corresponding alteration in the rule by which the returning officer was to be guided in the election and return.

The stat. 28 Geo. 3. c. 52. § 31 (*a*), recites the clause of the 2 Geo. 2. c. 24, just referred to, and repeals it in so far only as the same relates, or might be construed to relate, to any such determination to be subsequently made in the house of commons.

The election is therefore now to be carried on, and the return to be made according to the right of election, as determined by the house of commons, prior to the passing of the statute

(*a*) For this stat. see *post*, part 3.



28 Geo. 3. c. 52., or by a select committee where there has been a decision subsequent to, and under the authority of that act; and a return upon any other than such right of election, will be a false return, and will subject the person making it, to be proceeded against as stated in the preceding section, or by information or indictment for disobedience of the stat. 7 and 8 W. 3. c. 7; as well as to a civil liability in damages to the person grieved, which will presently be inquired into.

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See ante, 653.

Liability of returning officer in respect of false return.

(See post, sect. 12.)

With respect to elections for knights of shires:—The right of voting for counties not depending, as in the case of boroughs, upon particular local customs, but upon the general law of the land, it is not to be expected that there should be many last determinations of the house or of committees thereupon. Disputes may, however, arise as to the boundaries of counties, and districts originally part of a county, but which have been severed from it; and this may produce a determination upon the right of voting for freeholds within the disputed limits.

Last determinations in respect of county elections.

Heyw. Co. El. 465.

*Yorkshire*, 9th March, 1735. It was proposed on the part of the petitioners to disqualify one *William Stothard*, who had voted in right of a freehold at *Acomb*, in the hundred or wapentake of *Ainsty*, within the county of the city of

22 Journ. 622.



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*York.* Evidence being given as to these facts, and the usage as to persons voting for freeholds within the said hundred or wapentake. The sitting member produced a copy of the record of letters patent granted by king Henry 6, the 11th day of February, in the 27th year of his reign (*a*), to the mayor and citizens of the city of *York*, granting to them and their successors that the said hundred or wapentake, with the appurtenances, should be annexed and united to the county of the said city, and be parcel thereof. The house resolved, that persons whose freeholds lie within that part of the county of the city of *York*, which is commonly called the *Ainsty*, have a right to vote for knights of the shire for the county of *York*.

(*a*) The letters patent recited, "that the said city, the suburbs and precincts thereof, was then a county by itself, divided and separated from the county of *York*, and called the county of the city of *York*; and that the mayor and citizens of the said city were bailiffs of, and in the hundred or wapentake of *Ainsty*; and granted to them and their successors, that the said hundred or wapentake, with the appurtenances, should be annexed and united to the county of the said city, and be parcel thereof; and that the said city, suburbs and precinct, hundred, or wapentake, and each of them, with their appurtenances, and every thing in them, and each of them contained, except the castle of *York*, the towers, fosses, and ditches, to the said castle belonging, be the county of the said city, separated and divided from the county of *York*; saving always to the church of *York*, and the archbishop, dean, and chapter thereof, and every other community spiritual and temporal, and all and singular other persons, all kind of franchises, privileges, rights, commodities, and customs, to them, or any of them, of right belonging."



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With respect to elections for other places: If there have been no last determination or report of the right of election, nor any act of parliament affecting it, such right will depend upon charter or usage. And if there be no charter, nor any certain custom, (which cannot well be the case in any place at this day,) recourse must be had to common right; by which, according to the *Cirencester* case, 21st May 1624, the elective franchise would be in all men, inhabitants, householders, resiants within the borough.

Last determination, or if none, charter or custom to decide right of election.

Glanv. 107. Common right is in inhabitants, householders, resiants.

There are some few places where the right of voting has been regulated by act of parliament (a).

In some instances right regulated by act of parliament.

It is obvious, that no agreement or consent of parties can alter or vary the right of election. It was laid down in the *Cirencester* case, 21st May, 1624, before cited, that the agreement of competitors or any others cannot alter the law, or make an election by freeholders only, lawful, where the same ought to have been by all the inhabitants, householders, and resiants. And this has been ever since considered as the settled law of parliament (b).

No consent can affect right of election.

Glanv. 108. S. C. ante, 759.

(a) See *App.* liii. lxix. lxxxix, lxxxv.

(b) County of *Brecknock*, 22d February, 1695, where

the qualifications of the electors were settled between the candidates before the election, and it was agreed that



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Besides his liability in other ways, if a returning officer makes a false return, within the meaning of the law as above stated, the house will punish him.

14 Journ. 74.  
Returning of-  
ficer making a  
false return  
taken into  
custody.

*St. Ives*, 8th December, 1702. Resolved that Mr. *John Hicks*, mayor of the said borough, “is guilty of making a false return of a member to serve in parliament for the said borough of *St. Ives*, contrary to the last determination in parliament.” And he was ordered to be taken into the custody of the serjeant at arms.

There are also other cases, which are cases of false returns, but where the principal question was as to the competency of the returning officers to judge of the capacity or incapacity of candidates, and which will more properly fall under a subsequent section.

See post, sect.  
10.

SECTION 9. *Of special Returns.*

Where special  
circumstances  
prevent a regu-  
lar return,

IT occasionally happens, that peculiar circumstances prevent the officer holding the elec-

those who had leases, (which must mean chattel leases,) and Quakers, that could make out their estates, but, as the law then stood, were excluded because they would not take the oaths in the common form, this was clearly illegal. 11 Journ. 463.



tion from making his return in exact conformity to the exigency of the writ or precept, and produce the necessity of a return of a special nature (*a*).

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The instances which most frequently occur, are those which are proper for a double return, and these will presently be considered.

But whatever the cause may be, if there be any which renders it impossible to complete the election, the best course is to return specially the real facts.

such circumstances to be specially stated.

*Denbighshire, 1601.* There was no return of a knight of the shire, but the sheriff sent a letter to the house, excusing himself, by reason of riots, for not having executed the writ, and the house appears to have been satisfied (*b*).

D'Ewes, 627. Returning officer excusing himself for making no return by letter, alleging riots.

Special returns have been made in various cases; but the house and select committees, in the later instances, have examined more cautiously into the grounds of such proceeding, and where there has not appeared to be a sufficient reason why there should have been a departure

Necessity of a special return must be clearly shewn.

(*a*) Special returns are recognized by the stat. 25 Geo. 3. c. 84.

(*b*) There was annexed to the letter a schedule, which,

it was stated, contained some matters of importance not fit to be read, which it was the pleasure of the house should not be read. D'Ewes, 627.



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from the ordinary course, they have strongly reprehended it.

18 Journ. 21.  
58.

Returning of-  
ficer making a  
special return  
that he was  
prevented exe-  
cuting the writ  
by riots; on  
evidence  
heard, censur-  
ed and com-  
mitted.

*Leicestershire*, 24th March and 11th April 1714. The house took notice, by the book of returns, that the high sheriff of the county of *Leicester* had not returned any knights of the shire to serve in parliament for the said county; and that he had made a special return, stating in substance that the undersheriff was proceeding in the election, when certain persons, to the number of forty or more, riotously, routously, and unlawfully to disturb the election, assaulted him in the execution of the writ, and beat and ill treated him, and so threatened and ill used him, and made such riots, routs, affrays, tumults, and disturbances, that he could not cause two knights to be elected. The house being informed that two petitions against the election had been presented, ordered that a new writ should be issued, and that the undersheriff should attend.—Mr. *Baresby*, the undersheriff, attended according to the order; and he being heard, and witnesses examined, both for and against him, the house resolved, that he “having neglected to return two knights of the shire to serve in parliament for the said county by the 17th day of March, being the day of the meeting of Parliament, was guilty of a great breach of the privilege of this house.” And he was com-



mitted to the custody of the serjeant at arms.—

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On the 19th May following, he was reprimanded and discharged.

18 Journ. 125.

*Coventry*, 6th November 1780. The house taking notice, by the book of returns, that the sheriffs of the city of *Coventry* had not returned any citizens for the said city, and that they had made a special return why they had not returned such citizens; the return was read, by which they certified that they were impeded in the execution of the writ, and that the election was prevented by riots.—Petitions were presented from two of the candidates, and some of the freemen, complaining of the partiality and misconduct of the sheriffs. On the 15th March, 1781, the sheriffs being heard in their defence, it was “resolved, that it appears to this house, that, at the last general election of citizens to serve in parliament for the city of *Coventry*, *Thomas Nixon* and *Thomas Butler*, the sheriffs, who were the returning officers at the said election, were not prevented, by riots or otherwise, from making a return of members to serve in parliament for the said city.” And it was “resolved, *nem. con.* that the said *Thomas Nixon* and *Thomas Butler*, late sheriffs of the said city of *Coventry*, not having made any return of members to serve in parliament at the last general election for the said city, are thereby guilty of a

38 Journ. 8.

S. P.

S. C. ante, 733.

38 Journ. 294.



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38 Journ. 296.

Ib. 321.

high violation of the law, and a gross breach of the privileges of this house." And for this offence they were ordered to be committed to Newgate. On the 16th March, the house being informed that Newgate was an improper place for their confinement, removed them into the custody of the serjeant at arms. On the 27th, they were reprimanded and discharged.

60 Journ. 14.  
85. 2 Peck. 382.  
S. C. ante, 321.

*Knarborough*, 24th January, and 26th and 27th February, 1805, the bailiffs who had the execution of the precept, returned specially, that, having received the precept, they attempted to proceed to the election, but that they were so interrupted by the violence of the mob, (the manner and circumstances of which interruption were set forth in the return) (*a*), that they were

(*a*) See the proceedings in this case *ante*, 321, *et seq.*

The return was as follows: We the bailiffs of the borough of *Knarborough*, &c. having received the precept of the sheriff for the election, &c. did, on the 25th July instant, make a proclamation, &c. "that, in pursuance of the said proclamation, we attempted to proceed to such election with the assistance of Sir J. J. Bart. a magistrate for the West-riding of the said county, and of 20 special constables, but were unable to get to the court-room by the violence of the mob,

consisting of several hundred people, who had previously obtained possession of the stairs leading thereto, aided and instigated by the following persons, *viz.* (eight persons therein named), and several others, whose names are at present unknown, who not only insulted and pelted the magistrate and one of the returning officers, but also took the staffs from the constables, knocked them down as well as several of the electors, and destroyed their clothes, and also dragged one of the special constables, servant to the said Sir J. J. a considerable



unable to execute the precept. It appeared that this return was justified by the facts, and no blame was imputed to the returning officers.

The result of the cases is, that it will be incumbent upon the returning officer to establish that he has made every effort to execute his duty, and that, if he has been prevented, it has been by obstacles not to be surmounted by any means in his power; and this is the more reasonable, as he is abundantly protected by the powers of the law.

Before the duration of scrutinies was limited, there were some instances of special returns of a scrutiny pending (*a*), but, as the law now stands, the circumstances which occasioned them cannot again arise.

distance to the river side, threatening to drown him; that, after our return to the court house, the said Sir *J. J.* being afterwards accompanied by *J. W.* Esq. and the Rev. *C. K.* two other magistrates for the said *West-Riding*, finding that it would only endanger the lives of themselves, the returning officers and voters, if they attempted to proceed in the election, or to read the riot act, but would be absolutely

useless, as there were no soldiers nearer than the barracks at *York*, being twenty miles from this place, except the volunteers of *Knaresborough*, several of whom were seen to encourage rather than suppress the mob. From the above circumstances, we hereby certify, that we are unable to execute the precept as directed; as witness our hands, this 30th day of July 1804,—  
*James Collins, John Carr.*"

(*a*) See *ante*, 712, (*n.*)



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Cases have occurred of special returns, where questions have been made of the eligibility of the person chosen, but the consideration of these belongs to the next section.

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SECTION 10. *Whether the disability of the persons chosen can affect returns in the first instance.*

IT is now to be considered what return is proper to be made, where the person having the majority of votes is ineligible or disqualified.

See *ante*, 468.

That it is not within the province of a returning officer to judge of the capacity or incapacity of candidates, seems to be the better opinion (*a*), and if so, it is his duty simply to return the person having the majority, whether incapacitated or not.

The cases, however, are not consistent with each other, which makes it necessary to examine them with some attention.

(*a*) See Heyw. Co. El. 526.



The following are in support of the above opinion.

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*Leicestershire*, 7th, 8th, and 9th February, 1620, Sir *George Hastings* had the majority; but the sheriff returned Sir *Thomas Beaumont*.

1 Journ. 511.  
513. 515.  
S. C. ante 81.  
(n).

A question was made as to the eligibility of Sir *George Hastings*. In the debate upon which, Mr. *Holt* said, "The sheriff judge of the number of voices, but not of ability or disability; *ergo* his return naught (a)." The house, having decided in favour of Sir *George Hastings*, ordered that the high sheriff and undersheriff should be both brought in to the bar as delinquents. The speaker charged the sheriff as a great offender to the house and to the state, "that knowing Sir *George Hastings* to be elected by the greatest number, he refused to return the election of Sir *George Hastings* chose, and returned another." The sheriff confessing his offence, and the under-

Sheriff said to be no judge of ability or disability of candidates.

(a) At the election Sir *Thomas Beaumont* questioned about being chosen; the sheriff adjourned the meeting till two of the clock that afternoon; when those two gentlemen were again chosen, as testified by the certificate, and by the undersheriff present with the committee. Against this, Sir *Tho. Beaumont*, present, objected (amongst other things) that Sir *George* was

no inhabitant of the county, nor freeholder to his knowledge. The merits were afterwards argued by counsel before the house, and they decided against Sir *Tho. Beaumont*, and that, notwithstanding the stats. 1 Hen. 5. and 8 and 23 Hen. 6. Sir *George Hastings* was not incapable, and that his election was good.



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sheriff exculpating himself, they received the pardon of the house upon their knees.

1 Journ. 880.

Same point.

*Coventry*, 9th April 1628. One sheriff returned two gentlemen not resident in the city, chosen by the majority; the other sheriff two others, resident in the city. The committee resolved unanimously, that the two first were duly elected; and the house agreed, and ordered the latter sheriff to be called to the bar; where, having acknowledged his error, further punishment was remitted, and he was ordered to join the other sheriff in amending the return.

11 Journ. 201.  
238.

Returning officer taking upon himself to judge of incapacity of candidate, and not returning the person chosen, upon an alleged incapacity, censured and taken into custody.

*Liverpool*, 11th January 1694. The house of commons resolved that Mr. *Alexander Norres*, mayor of this borough, "having taken upon him to judge that *Jasper Maudit*, Esq. being coroner of the said borough, was incapable to be elected a Burgess to serve in parliament, although duly chosen; and having made a false return of *Thomas Brotherton*, Esq. to serve as a Burgess for the said borough, hath herein violated the rights of the commons of *England*, and broken the privileges of this house." And he was sent for in custody of the serjeant at arms; where he remained till the 20th February, when he was reprimanded and discharged.

The cases alluded to as inconsistent with those



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above mentioned, are (with one exception) of a later date. It is to be observed, however, that their operation is matter of inference only. They are cases where the officers must in reality, though not in terms, have taken upon themselves to judge as to the capacity of candidates, and where they escaped without censure, there being no positive adjudication as to the propriety of their conduct.

*Leominster*, 22d March, 1662, a poll was denied to Mr. *Coningsby*, (then supposed to be ineligible). It was said, the denying the poll to him could not avoid the election, and the sitting members were declared duly elected.

8 Journ. 392.  
Returning officer denying a poll to a person supposed to be ineligible, not censured.

*Haslemere*, 10th November, 1702, and *Norwich*, 6th December, 1705; *Cockermouth*, 18th January, 1717; were cases of double returns, where the persons, by the numbers entitled to be returned being supposed to be incapacitated, the officers returned other candidates also. In each of these, as well as in that about to be next mentioned, the returning officers must have entertained the question of the capacity or incapacity of candidates; and it does not appear that they were censured for so doing, although, in the latter case, the conduct of the officer was strongly reprobated in another particular (a).

14 Journ. 26.  
(and post, 799.)  
15 Journ. 55.  
(Ante, 83. 466.  
and post, 800.)  
18 Journ. 672,  
673. (and post,  
800.)  
Returning officers returning other candidates in addition to those having the majority, the latter being supposed to be incapacitated, not censured.

(a) See ante, 466.



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21 Journ. 34.  
50. 138.  
S. P. as to one  
of the candi-  
dates.

*Bedford*, 2d and 14th February, 1727, and 16 April 1728.—Lord *Ongley* and Mr. *Metcalf* had a majority upon the poll, but Mr. *Orlebar* and Mr. *Brace* were returned. The two former petitioned; but it appearing that Lord *Ongley* had an office touching the collecting of the customs, it was therefore resolved “that he was incapable of claiming to sit in parliament for the said borough.” Whereupon it being admitted that *Orlebar* and *Metcalf* were duly elected, and no defence being made by *Brace*, it was so resolved.

1 Peck. 526.  
S. C. ante, 262.  
Semble from  
this case, that  
the returning  
officer has a  
discretion  
whether to re-  
turn a candi-  
date objected  
to as incapaci-  
tated.

*Flintshire*, 1797. Sir *Thomas Mostyn*, who had the majority, and was returned, was a minor; and public notice thereof had been given at the election. The committee, after resolving that he was not duly elected, and that the petitioner, Mr. *Lloyd*, ought to have been returned; resolved, “that the counsel for the returning officer should be called in, and informed that they were ready to hear him, before they determined upon the question whether the election or return was vexatious and corrupt.” After hearing the counsel for the returning officer, they decided the election and return to have been vexatious, but not corrupt.

This course of proceeding seems to imply, that the officer had a discretion whether to re-



turn a person objected to as incapacitated ; otherwise it is not very obvious to what point his counsel could have had to speak.

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The above two sets of cases cannot be reconciled with each other ; but, in judging of their weight, it is to be observed, that, in the first class of them, what is laid down is more express and positive ; and that, in adopting the doctrine they support, less risk is incurred by the returning officer, inasmuch as, by making his return according to the numbers on the poll, he cannot well expose himself to any censure. And with respect to the persons who are the subject of the return, it is always to be remembered, that, if an incapacitated person becomes a candidate, a proper notice will prevent the necessity of another election in the event of his being chosen and returned. Whereas, if the other course be taken, of partially or wholly putting aside the person chosen, as incapacitated, and he should eventually be adjudged not to be so, he would have great reason to complain, whether another person should have been returned singly in his stead, or joined with him in a double return.

Grounds for a returning officer declining to consider the question of incapacity of candidates, and returning according to the majority.

(See ante, chap. 7.)



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SECT. 11. *Of double returns.*

IT sometimes occurs, that, upon the close of the poll, more persons than what are required by the exigency of the writ or precept to be chosen, have apparently an equal claim to the return (*a*). This is the case,

Case of equality of numbers.

(See *ante*, 701, 702.)

1. Where, upon casting up the votes, there is an equality of numbers, in favour of different candidates, there being no dispute about the right of election. We have before seen, that, in such cases, unless there be a particular custom to that effect, the returning officer is not entitled to the casting vote; and although it was formerly said that the electors ought to continue together, or to meet again (*b*) till they could agree to an election by plurality

(*a*) *Bedwin*, 7th December, 1747. There was a double return by the same officer, made by consent of candidates, there being some confusion in taking the poll. 25 Journ. 461.

(*b*) *Chippenham*, 9th April, 1624. At the election on the 21st Jan. Mr. *Maynard* was elected in the first place, and so pronounced and acknowledged without contradiction of any; and, for the second place, Sir *Francis Popham* and Mr. *Pym* had equal num-

bers, the one having the voice of the bailiff and five burgesses, the other of six burgesses; and, by agreement, the election for the second burgesship was adjourned till the 23d, at the same place; when, upon a dispute about the right of election, a double return was made. It was determined that the first burgess was duly elected, and "it was conceived by the committee, and so reported to the house, and there resolved, that Sir *Francis*



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of voices; the practice now is, in cases of equality, to return so many candidates as shall have such equal pretensions. *Gatton*, 5th May, 1660; *New Windsor*, 14th May, 1689; *Calne*, 12th March, 1701; *Cirencester*, 3d Nov. 1705; *Old Sarum*, 11th Dec. 1705; *Harwich*, 13th Jan. 1708; *Tiverton*, 1st Dec. 1710; *Clitheroe*, 28th and 30th March, 1715; *Droitwich* and *Great Bedwyn*, 17th Nov. 1747; *Bury St. Edmund's*, 2d Dec. 1754; *Appleby*, 3d & 10th Feb. 1756; *Mitchell*, *Dumferling*, 1803.

8 Journ. 13.  
10 Journ. 132.  
13 Journ. 792.  
15 Journ. 12.  
Ibid. 60.  
16 Journ. 58.  
Ib. 407.  
18 Journ. 29.  
34.  
25 Journ. 424.  
429. 466.  
27 Journ. 38.  
Ib. 425. 443.  
1 Lud. 73.  
1 Peck 1.

2. Where it is uncertain to whom it legally belongs to be returning officer, there being adverse claims either in respect of different offices, or of different titles to the same office.

Where adverse claims to be returning officer. (See *ante*, part 2. chap. 5. § 4.)

This necessarily produces a double return, because the election can only be duly holden by the proper officer, as we have already stated; and where it has been uncertain who such proper officer was, the claimants have, in many instances, each taken a poll; that only which was

*Ante*, 450.

*Popham*," (in whose favour the right of election was determined by a previous resolution), "was duly elected in the second place at the second meeting; for the adjournment by the bailiff and eleven that effectually attend-

ed the first day, and could not then agree, was a good adjournment;" and at such second meeting, he had a majority of those who had a right to vote. *Glanv.* 47. 51. 61. 1 Journ. 759. S. C. *ante*, 687.



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taken by him who should eventually turn out to be the proper officer being to be acted upon.

15 Journ. 232. 235. 252.  
(*Ante*, 405. 451.)  
18 Journ. 543. 555. 564.  
(*Ante*, 447.)  
19 Journ. 705. 725.  
21 Journ. 28.  
25 Journ. 423. 458.  
1 Lud. 109.  
3 Lud. 173.  
1 Peck. 512.  
1 Fras. 3.  
1 Fras. 69.

Such were the following cases: *Clitheroe*, 13th, 14th, 20th, & 23d Jan. 1706; *Minehead*, 8th, 16th, and 23d May, 1717; *Minehead*, 9th and 23d Jan. 1721; *Milborne Port*, 1st Feb. 1727; *Milborne Port*, 17th Nov. and 2d Dec. 1747; *Downton*, 17th June, 1784, and 17th Feb. 1785; *Fowey*, 8th Feb. 1791; *Hellston*, 17th Dec. 1790; *Oakhampton*, 4th Feb. 1791.

In most of these cases, the question as to the title of the returning officer was first disposed of, and the return amended accordingly in the first instance.

Where right of election disputed.

3. Where the right of election is either wholly or partially disputed, and there are candidates respectively having a majority on the different alledged rights.

In these cases, from the uncertainty of the proper right of voting, it may well happen that one party may have the majority as founded upon one right, and another upon another. Where this occurs, if the returning officer does not feel himself justified in deciding as to which is the proper right, he may return the parties elected



upon both grounds, as was done in the following cases.

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*Hertfordshire*, 30th April, 1690 ; where a particular class of voters being objected to, the fate of the election depending upon the admission of the votes of seventy-three quakers, Mr. *Freeman* and Sir *Charles Cæsar* were both returned. 10 Journ. 395.

*Horsham*, 20th and 29th Dec. 1806, and 8th, 20th, and 21st Jan. 1807. A question was made at the election, as to what constituted such a burgage tenement as gave the right of voting ; and Lord *Fitzharris* and Lord *Palmerston* upon one ground, and Mr. *Wilder* and Mr. *Jones* upon another, were all returned. 63 Journ 10. 19. 59. 69. 73.

The returning officer must not presume to take this step, unless he have a real *bond fide* doubt, otherwise he will place himself in a situation of great jeopardy.

4. There have been cases also, where, upon doubts as to the eligibility of candidates having the majority, returns have been made, both of such candidates, and of others who claimed to be returned upon the ground that the election of those who were first upon the poll was nugatory. Where doubts as to eligibility of candidates.



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14 Journ. 26,  
(and ante, 793.)

*Haslemere*, 10th November, 1702. The question was between Mr. *Oglethorpe*, and Mr. *Tichborne*. The former was entitled to the return in point of numbers. An objection was made to him, that he was not 21 years of age at the time of the election. A double return was thereupon made, of Mr. *Oglethorpe* in one indenture, and of Mr. *Tichborne* in another. The house having tried the question of the age of Mr. *Oglethorpe*, resolved that he was duly elected.

15 Journ. 55.  
and ante, 83.  
466. 760 (n).

In the before-mentioned case of *Norwich*, 6th Dec. 1705. The majority on the poll was for Mr. *Bacon* and Mr. *Chambers*; but the other candidates, Mr. *Blofield* and Mr. *Palgrave*, insisted that the first were ineligible. They were all returned. The two former were seated.

18 Journ. 672,  
673.  
1 Peck. 17.

*Cockermouth*, 18th January, 1717 (a). Sir

(a) The bailiff, in this case, indorsed upon the precept as follows:

“ Executio istius præcepti patet in quâdam schedulâ huic præcepto annex’; cumque per idem præceptu’ mihi præcipitur ad eligend’ un’ burgens’ burgi infra-script’ idoneu’ et discretum; attamen ex quo post captionem vocum sive suffragior’ omniu’ et singulorum electorum comparentiu’ in plenâ

curiâ ejusdem burgi tent’ apud le GUILDHALL pro eodem burgo, die et anno in indenturis annex’ specificat’ ad eligend’ un’ burgens’ pro burgo prædict’ octogint’ et quatuor electorum præd’ pro *Percy Seymour*, ar’ communit’ vocat’ Lord *Percy Seymour*, et nonagint’ elector’ præd’ pro *Wilfrido Lawson*, Bar’ suffragia deder’; cumque ad-tunc et ibidem allegat’ ac per testes fide dignos probat’ fuit,



*Wilfrid Lawson* had the majority, but it was objected to him that he was a minor; whereupon the returning officer returned both him and Lord *Percy Seymour*.—Sir *Wilfrid Lawson* admitted his minority, and the return was amended by order of the house, by taking off the indenture by which he was returned.

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It seems however very doubtful, for reasons already stated, whether this is a proper ground for a double return.

(See ante, sect. 10.)

5. Another ground for a double return has been, where a scrutiny had been granted by the returning officer, and the scrutiny was unfinished at the time the writ was returnable.

Where a scrutiny pending.

This was done in the case of *Oxfordshire*, 18th, 20th Nov. and 3d Dec. 1754. Lord *Parker*, Sir *Edward Turner*, Lord *Wenman*, and Sir *James Dashwood*, were candidates. The sheriff declared the majority in favour of the two latter, but having granted a scrutiny to the two former, he allowed them to go through all their objections, before he would enter into those that were made by the two latter. On the 23d day of the scrutiny, he put a period to

27 Journ. 17.  
18. 22. 42.  
S. C. ante. 712.  
(n.)

quod præd' *Wilfridus Lawson*  
adtunc infans infra ætat'  
viginti-unius annorum exist-  
ebat, et adhuc existit; Ideo  
in un' indenturâ annex' no-

men præfat' *Percy Seymour*,  
ac in alterâ indenturâ annex'  
nomen præfat' *Wilfridi Law-*  
*son*, inseri feci.—Thomas  
France, bailiff."



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it, for the purpose of returning the writ, and thereupon returned all the four candidates, notwithstanding that Lord *Wenman* and Sir *James Dashwood* had a majority upon the poll of votes not disallowed. The house do not appear to have disapproved this course, inasmuch as a motion that the sheriff should attend the house to answer for so doing, was negatived.

Double return  
not to be made  
except upon  
very sufficient  
grounds.

2 Peck. 324.  
*Ante*, 773.

It is to be collected from the general principle of all the cases of undue or improper returns which have been mentioned in the different parts of this chapter, and particularly from that of *Liskeard* 1804, that the making a double return, where circumstances do not imperiously call for it, will be a high offence in a returning officer, under the law of parliament, and will subject him to be dealt with by the house of commons, as in all other cases of undue or false returns, as well as to the particular responsibility to the party grieved, which is about to be stated. And it is to be observed, that the stat. 7 and 8 W. 3. c. 7 (a), classes false and double returns together as an abuse of trust, in a matter of the greatest consequence to the kingdom. This clause speaks of double returns generally, but that must be taken as meaning double returns wilfully, falsely, and maliciously made, as contemplated by § 3 of that act.

(a) For this statute, see *ante*, 776.



In double returns upon the first ground, (as well as upon the fourth and fifth, if such double returns can properly be made,) the return of the different candidates may be made either by the same indenture (*a*), as in the nature of a special return, or by separate indentures;—but the latter is the more usual. In those upon the second and third grounds, the return of the different candidates are necessarily made by separate indentures.

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Manner of  
making double  
returns.

Where there are double returns made to the sheriff, he must return them to chancery at the same time:—*Great Marlow*, 22d March 1688. There was at first but one indenture returned, and another was added a fortnight afterwards; the house resolved that this was not a double return, and caused the latter indenture to be taken off the file.

Double returns  
to be made at  
one time.10 Journ. 349.  
and see 1 Peck.  
17.

Members returned upon double returns, are incapable of sitting till the returns are determined by a committee, and there is a resolution of the house to this effect, at the commencement of every session.

(*a*) It will be seen that it may be of some advantage, where several are returned by one indenture, to be named first in that indenture; or, where there are several indentures, to be returned by that which is immediately

annexed to the writ or precept, as that circumstance decides who shall first proceed upon the petition. It seems to be the duty of the returning officer to name that candidate first whom he considers best entitled to the seat.



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Cricklade,  
1775.1 Doug. 99 (n.)  
293.Mitchell,  
1784.

1 Lud. 73.

The usual way, in making double returns, is to return all having an equal claim, "as duly elected;" and in one case, the consequence of a departure from that mode, was that it was not considered as a double return before the select committee; but in a more recent case the committee decided otherwise.

1 Peck, 505.

*Colchester 1789.*—The return stated specially, that Mr. *Jackson* and Mr. *Tierney* were candidates, and that each had six hundred and forty votes at the close of the poll, but did not say that either was duly elected;—Mr. *Jackson's* name standing first upon the return. A question was made upon this, whether it was a double return, within the meaning of the order of the house, of 18th March 1727, as to which side should begin. The committee decided, that it was not a double return within the meaning of that order.—But this decision, which was pressed upon the committee in the *Dumferling* case, 1803, must be considered as having been overturned by that case.



SECTION 12. *Of the remedy to the party grieved in cases of false returns, or double returns improperly made; or of delay or refusal in making returns.*

1. THE law at first regarded the mischief of false returns, only so far as it affected the public, and the place to be represented, by the substitution of other persons than those legally elected, to be members of the house of commons.

Originally, party grieved had no remedy.

The stat. 7 H. 4, c. 15 (a), which first regulated county elections, recites the grievous complaint of the commons “of the undue election of the knights of counties for the parliament, which be sometimes made of affection of sheriffs, and otherwise against the form of the writs directed to the sheriff, to the great slander of the counties, and hindrance of the business of the commonalty in the said county.”

But neither the recital nor the enacting part of that statute contemplate, in a false return, any injury done to the person, who although intitled so to be, should not be returned.—The stats. 11 Hen. 4, c. 1 (b), and 8 Hen. 6, c. 7 (c), the former of which makes sheriffs punishable by fine,

(a) For this stat. see *ante*, 529.

(b) *Ibid.* 764.

(c) *Ibid.* 767.



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and the latter by fine and imprisonment, in respect of false returns, still maintain the same tone in this respect: although by the last, the knights unduly returned were to lose their wages.—This, however, was probably intended rather to relieve the county from the payment of wages to a person whom it did not choose, than as a punishment to the person unduly returned.

Thus far the statutes applied to writs only:—As early, however, as the reign of Henry 6, a remedy was given to the party grieved in the case of a false return, and this extended to returns, both under writs and under precepts.

Returns to writs :  
Sheriff to forfeit £100, and costs, to every person chosen knight, citizen, or burgess within his county, and not duly returned.  
See *ante*, 770.

With respect to returns under writs:—The stat. 23 Hen. 6, c. 14, § 1 (*a*), in addition to the fine and imprisonment thereby imposed upon sheriffs in respect of false returns, as already mentioned, ordains that every sheriff, at every time that he doth contrary to that, or any statute for the election of knights, citizens, and burgesses, before that time made, is to forfeit and pay to every person chosen knight, citizen, or burgess, in his county, and not duly returned, £100, and the person so grieved is to have his action of debt against such sheriff, his executors, or administrators, for the same, with the costs spent in that case.

(*a*) For this stat. see *ante*, 398, *et seq.*



By § 3 (*a*), the knight, citizen, or burgess chosen, and not returned, is to begin his action within three months after the parliament commenced; and he is to proceed in the suit effectually, and without fraud; and if he do not, another that will sue, is to have the action of debt, and to recover the same sum with costs as before-mentioned (*b*).

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Action to be brought within three months, and proceeded in effectually, &c.

With respect to returns under precepts:—The same statute 23 Hen. 6, c. 14, § 1, in addition to the forfeiture to the king before-mentioned, makes any mayor and bailiffs, or bailiffs or bailiff, where no mayor is, returning other than those chosen by the citizens or burgesses of cities and boroughs, liable to forfeit and pay to the person chosen and not returned £40, to be recovered, with costs, in the manner stated in the case of knights of the shire, and with the same provisions as to other persons suing, in default of the party grieved, and in all other respects.

Returns to precepts: Mayors, &c. to forfeit £40, and costs to persons chosen for cities and boroughs and not returned. (See *ante*, 771.)

With respect to returns both under writs and under precepts:

As a seat in parliament became more an ob-

(*a*) See *ante*, 400.

above penalties is to have any wager of law or essoign.

(*b*) By § 1 and 3, no defendant in any suit for the



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ject of ambition, and consequently of competition, the compensation to the party grieved, for the injury by him sustained in respect of a false return, or an illegal double return, became very inadequate, while it was limited to the forfeiture imposed by the statutes in his favour.

No action lies at common law in respect of false or double returns.

An idea arose that an action at law would lie in either case, whereby the person intitled to be returned, or to be returned singly, might indemnify himself for the injury sustained by a false return, or by an improper double return wilfully made; and several actions upon the latter ground were brought (a), and at first entertained, but upon

(a) *Barnardiston v. Soame*. An action was brought by the plaintiff against the defendant, who was sheriff of *Suffolk*, charging that he maliciously intending to deprive him of the office of knight of the shire made a double return. Upon a trial at bar *Twysden*, *Rainsford*, and *Wylde*, justices, held, and so directed the jury, that if the return were made maliciously, they ought to find for the plaintiff; which they did, and gave him £800 damages; and on motion in arrest of judgment, *Hale*, C. J. being in court, he, *Twysden* and *Wylde*, justices, held, that forasmuch as the return was laid to be *false et malitiosé et eâ intentione* to put the plaintiff to charge and expence, and so found

by the jury, the action lay. *Rainsford*, J. doubted. But notwithstanding this charge of the malice, the judgment was reversed in Cam. Scacc. and that judgment of reversal was affirmed in parliament. 2 Lev. 114. 1 East, 568, (n). 3 Lev. 30. 1 Lut. 89. 7 St. Tr. 431. 442. 452.

*Onslow v. Rapley*, M. 33 Car. 2, was an action brought by the plaintiff, who was chosen one of the burgesses to serve in parliament for *Haslemere*, by the majority of the electors, against the defendant, who was returning officer, for returning another person, as well as the plaintiff.—On not guilty pleaded, and a verdict for the plaintiff, it was moved, in arrest of judgment, that the action would not lie; and of that opinion



grave consideration the law was decided to be otherwise, and it was solemnly determined that no such action would lie.—The legislature, however, at length adverting to false and double returns, as being an abuse of trust in a matter of the greatest consequence to the kingdom, and as an injury to the persons duly chosen, by keeping them from their service in the house of commons, and putting them to great expence to make their elections appear, interposed by the stat. 7 and 8 W. 3, c. 7, more positively to declare them illegal, and to prohibit them, and at the same time to explain what should be adjudged to be a false return, as has been before said.

See *ante*, 778.

The statute gave to the party grieved a remedy in damages, even beyond what had been sought for under the common law.

That stat. by § 2 (a) enacts, that the party were the whole court, viz. *Vent. 37. S. C. ante, 81. North, Ch. Justice, Windham, Prideaux v. Morris, 2 Ann. Charlton, and Levins, justices; B. R. was to the same effect; for they said they had no jurisdiction in the matter, and though this case was the principal part thereof subsequent to the passing of being a return in parliament. the statute 7 and 8 W. 3, They said that no action, before the statute Hen. 6 did lie against a sheriff or chief officer of a corporation for a false return, and the courts being an action at common law, it was not aided by the statute. 2 Salk. 502. See also several other cases referred to by the reporter there, but the law being now settled by the statute of *William*, it is unnecessary to detail them.*

(a) For this stat. see *ante*, 777.

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Party grieved by false return, may recover double damages and costs against persons making or procuring return, or against any of them.

grieved by such false return, (false returns having been defined by § 1 of the act), that is, the person duly elected, may sue the officers and persons making or procuring the same, and every or any of them, at his election, in any of his majesty's courts of record at *Westminster*, and shall recover double the damages he shall sustain by reason thereof, together with his full costs of such suit.

In such case false returns must be wilful.

False returns, in order to bring them within the meaning of the act, must be wilfully made. This appears by reference to its first section.

Evidence on proceedings for false or double returns.

(*Post*, §14.)

By § 5 (*a*), of the same statute, for the more easy and better proof of any such false and double returns, a book, which will be spoken of, is to be kept, in which all returns and amendments thereof are to be entered; to which book all persons are to have free access at all seasonable times, to search and take copies of so much thereof as shall be desired, paying a reasonable fee or reward for the same. And the party or parties prosecuting such suit, may at any trial give in evidence such book so kept, or a true copy thereof, relating to such false or double return, and are to have the like advantages of such proof, as he or they might have had by producing the record itself.

(*a*) For this stat. see *ante*, 777.



By § 6 (*a*) of the act, every information or action, grounded upon that statute, is to be brought within two years after the cause of action shall arise, and not afterwards.

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Information,  
&c. to be  
brought within  
two years.

It seems that a return of a person not having the majority of legal votes, wilfully made, (be the ground for so doing what it may,) will subject the returning officer to an action under the statute. It was decided in the following cause, that the action is not confined to cases where there has been a last determination of the house of commons, as to the right of election.

An action was brought, in the court of King's Bench, under the above statute, by Sir *Watkin Wynne*, against Mr. *Myddleton*, the sheriff of *Denbighshire*, for a false return of *J. M.*, the plaintiff having the majority of votes. The declaration stated, that petitions were presented to the house of commons, that the house thereupon resolved that the plaintiff was duly elected, and that he ought to have been returned, and ordered the return to be amended, &c. The jury gave £1400 damages, whereupon the court gave judgment for £2800. It was objected (*inter alia*) upon writ of error in the Exchequer Chamber, that double damages could only be

1 Wils. 125.  
Actions for  
false returns  
not confined to  
cases where re-  
turn contrary  
to the last de-  
termination of  
the house, as to  
right of elec-  
tion.

H. T. 19 Geo.  
2.

(*a*) For this stat. see *ante*, 778.



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recovered in respect of the return being contrary to the last resolution of the house of commons, and that it did not appear that there was any last resolution of the house. *Ld. Ch. J. Willes* in giving judgment as to this objection, (present, *Parker*, *Ch. B. Abney* and *Burnett*, justices; *Reynolds*, *Clarke*, and *Clive*, barons), said, we are all of opinion, except *Abney*, that this action is well brought, and that double damages shall be recovered for any false return (*a*).

2. As to cases of double returns improperly made:

The stat. 7 and 8 W. 3, c. 7 (*b*), in reciting, by § 1, the mischiefs before alluded to, classes false and double returns together, as productive of them. It is obvious that this must mean double returns, where circumstances do not justify them, because it has been shewn, that there are some cases wherein they are proper, and some where they are inevitable. The other parts of this statute justify this observation.

Where there is not a sufficient ground to call for a double return, the making such is no light

(*a*) There were other points, as that such action was not within the 4 and 5 Ann. c. 16, and therefore that the jury should have been *de vicineto*, and not *de corpore* *comitatus*, and as to the form and substance of the judgment, all of which were overruled, and judgment affirmed.

(*b*) See *ante*, 776.



grievance to the person who ought to have been singly returned. In this view of it, the statute 7 and 8 W. 3, c. 7, having given the action for double damages and costs upon a false return; by § 3, to the end that the law may not be eluded by double returns; enacts, that if any officer shall wilfully, falsely, and maliciously return more persons than are required to be chosen by the writ or precept on which any choice is made, the like remedy may be had against him or them, and the party or parties that willingly procure the same, and every or any of them, by the party grieved, at his election.

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Party grieved by double return, may recover double damages against officer making it wilfully, &c.

The provision of the act with regard to evidence in the case of informations or actions in respect of false returns, is the same in actions in respect of double returns, and the proceedings must be commenced within the same time.

Evidence in such proceedings, and time for bringing them.

See *ante*, 810.

3. As to cases of delay or refusal in making returns:

Party entitled to be returned may recover double damages and costs against returning officer delaying or refusing to make return.

By the stat. 25 Geo. 3. c. 84, (a) any sheriff

(a) The stat. 25 Geo. 3. c. 84. § 14. " And be it further enacted, that if any sheriff or returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned to serve in parlia-

" ment for any county, city, borough, or place within Great Britain, every such person may, in case it shall have been determined by a select committee, appointed in the manner herein-before directed, that



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or returning officer wilfully delaying, neglecting, or refusing to return any person who ought to be returned, may be sued by such person, if a select committee shall have determined that he ought to have been returned, and such person may recover double the damages (a) he shall have sustained, with full costs of suit.

SECTION 13. *Of the duty of the clerk of the crown upon receiving returns; of amending the same; and of the penalties in respect of illegal alterations of returns.*

Returns to be entered in book of the clerk of the crown.

WHEN returns are made into the crown-office, they are to be entered in a book to be kept for that purpose, in conformity to the stat. 7 and 8 W. 3, c. 7, § 5 (b), which (for the more easy and better proof of any false or double return) enacts, that the clerk of the crown for the time being, shall from time to time enter, or cause to be entered, in a book for that purpose, to be kept in his office, every single and double return of any member or members to serve in parliament, which shall be returned or come into his

“ such person was entitled  
 “ to have been returned, sue  
 “ the sheriff, or other officer,  
 “ or officers, having so wil-  
 “ fully delayed, neglected,  
 “ or refused duly to make  
 “ such return, and every, or  
 “ any of them, at his elec-  
 “ tion, in any of his majesty’s  
 “ courts of record at West-

“ minster, or of the court of  
 “ session in Scotland; and  
 “ shall recover double the  
 “ damages he shall sustain  
 “ by reason thereof, together  
 “ with full costs of suit.”

(a) See ante 712 (n) b.

(b) For this stat. see ante, 777.



office, or to his hands: to which book all persons are to have free access, for the purposes, and in the manner before stated.

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All persons to have access to such book. (Ante, 810.)

And by the same clause, together with § 4 of the act, in case the clerk of the crown shall not, within six days after any return shall come into his office or to his hands, duly and fairly make such entry or entries, (or if he shall wilfully neglect or omit to perform his duty in the premises therein) he is for every such offence to forfeit to the party or parties aggrieved, the sum of £500, to be recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, protection, or wager of law, is to be allowed, nor more than one imparlance; and by the same § 5, he is also in such case to forfeit and lose his office, and be for ever incapable of having or holding the same.

Penalties on clerk of crown, not making entry of return.

The same penalty and disability, is at the same time, imposed upon the clerk of the crown if he shall give any certificate of any person not returned.

Penalty on clerk of crown giving certificate to person not returned.

## 2. Of amending returns:

If there be any mistake in a return, upon its being made appear to the house, they will order it to be amended.

Mistakes in returns how amended.



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Glanv. 61.  
1 Journ. 686.

*Chippenham*, 15th March 1623.—There was a double return, one of Mr. *Charles Maynard*, and of Mr. *Pym*, the other of Mr. *Charles Maynard* and Sir *Francis Popham* :—there was no question about *Maynard's* election, but his name was mistaken in both returns, his name being *John*, instead of *Charles*. The house directed an amendment accordingly in the latter of the two returns, the decision being in favor of that return.

17 Journ. 117.  
145.  
Mistake as to  
name.

*Steyning*, 29th Feb. and 20th March, 1711.—Mr. *Wallis* petitioned against the return of Lord *Bellew*, claiming the legal majority, and accusing Lord *Bellew* of bribery. The house instructed the committee, in the first place, to examine the matters of the return. It appearing that the person named in the return was Lord Viscount *Bellew*, by mistake, for Lord *Bellew*, the return was amended accordingly.

*Sutherlandshire*, 15th Dec. 1790.—The surname of Lieutenant-General *James Grant* was omitted. The house, upon the information of a member as to the fact of identity, after referring to the entry just mentioned, ordered the return to be amended by the insertion of the word "*Grant*."

29 Journ. 52.

*Malmsbury*, 28th Nov. 1761.—Where the return was of *Richard Earl of Tilney*, in the kingdom of *Ireland*, it appearing that *John Earl of*



*Tilney* was the person designed to be returned, the house ordered that the return should be amended, by razing out the word "*Richard*," and inserting the word "*John*" instead thereof.

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*Lanarkshire*, 17th Dec. 1790 :—Where it appeared, that Sir *John Steuart*, who was returned, had, before the election, taken the name of *Denham*, the house ordered that the return should be amended accordingly.

46 Journ. 126.

*Huntingdon*, 5th June, 1792.—The return was dated 15th April, but the election, in fact, took place on the 15th May. The house ordered the return to be amended in that particular.

47 Journ. 1027.  
Mistake as to date.

And where upon the trial of a controverted election, it turns out that the person returned is not intitled to the seat, the course is upon such decision to order the return to be thereupon amended (*a*).

The same return may undergo more amendments than one, when there are questions both upon the legality of the return, and also on the merits of the election, and they are separately determined at different times (*b*).

By the stat. 7 and 8 W. 3, c. 7, § 5 (*c*), the

Alterations,  
&c. in returns

(*a*) *Clitheroe*, 30th and 31st March, 1715. 18 Journ. 34. 38. *Corfe Castle*, 21st Jan. 1718. 19 Journ. 64. *Peebles*, &c. 25th Jan. 1741. 24th Journ. 56. *Weobly*, 9th Dec. 1747. 25 Journ. 463.

(*b*) See the case of *Morpeth*, cit. 1 Doug. Introd. n. W.

(*c*) For this stat. see *ante*, 777.



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to be entered  
in clerk of the  
crown's book.

clerk of the crown is (under the beforementioned penalties of that clause) to enter in his book, every alteration and amendment made by him or his deputy in any return, to which book access may be had as before stated.

Manner of  
amending re-  
turns.  
8 Journ. 42.

It was formerly (a) the usage, when there was occasion to amend a return, that the returning officer should attend the house, and do it; and in the event of his neglecting to attend, it was done by the clerk of the crown, *Abingdon*, 23d May, 1660 (b). This continued to be the case

(a) Lord *Glenbervie* mentions that in very ancient times the method seems to have been to send a new writ to the sheriff, to inquire who had been elected, and if others than those who had been returned should appear to have had the majority of voices, to make a return of them into *chancery*; he cites the case of *Lancashire*, 1362, *Prynne's Brev. Parl.* Part i. p. 259.

In 1592, the speaker said, "No return can be amended in this house, for the writ and the return are in *chancery*, and must be amended there." 1 *Doug. Introd.* n. W.

*Chippenham*, 1623. When the return was to be amended, it was sent down to the bailiff, in the country, for that purpose. 1 *Journ.* 686.

*Leicestershire*, 12 Feb. 1620, the sheriff, not the clerk of the crown, was ordered to amend the return. 1 *Journ.*

525, 526.—The reasons given by Lord *Glenbervie* for the practice, are, one, the jealousy of the court of *chancery*, and its officers; the other, that as there was often some blame on the returning officer, he was deemed the proper person to be the instrument of amending his own error; there was a degree of humiliation and punishment in doing this publicly in the house, and by this means he was in the way if it should be thought proper to impose any further punishment upon him.

*Chichester*, 21st May, 1660. 8 *Journ.* 40. The mayor came together with the clerk of the crown, and amended the return.

(b) If there were two returns for the same place, annexed to the writ, and one of them was determined to be good, the clerk of the crown only attended in such case, to take the return off



until the passing of the resolution of the 12th April, 1690. As the practice now is, the clerk of the crown is ordered to attend with the return, and he amends it in the house, according to their directions (*a*).

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But when a return has been once made into the crown office, no person is to presume to make any alteration or amendment therein, unless by order of the house of commons.

Returns not to be altered, unless by order of the house.

12th April, 1690.—The house resolved, “That after a return made into the crown-office, of members to serve in parliament, the same shall not be altered by the sheriff or the clerk of the crown, or any other but by this house.”

10 Journ. 377.

3. Of the penalties in respect of illegal alterations of returns :

Any person making an unauthorized alteration in a return will not only be guilty of a violation of the before-mentioned order of the house of commons, but will incur the penalty of the stat. 23 Hen. 6, c. 14.

the file. 1 Doug. Introd. *n*. W.

(*a*) Where there is a decision, that any person or persons are not duly elected, the amendment is made by erasing the name or names of such person or persons, and inserting the names of those who ought to have been returned in

their place. And if there be two returns, and one is determined to be void, the clerk takes that off the file, leaving the other; and if that other contain the names of the person or persons determined not to have been duly elected, it is amended in the manner just described.

Penalty on clerk of the crown altering return, unless by order of the house.



## Sect. 13.

If person  
elected be put  
out after re-  
turn,

and another  
put in his  
place, the  
latter is to  
forfeit £100  
to the king,  
and £100 to  
person put out.

By § 3 of that stat. (a), if any knight, citizen, or burgess, thereafter returned by the sheriff to come to the parliament in manner therein aforesaid, after such return, be by any person put out, and another put in his place, such person so put in the place, if he take upon him to be knight, citizen, or burgess, is to forfeit to the king £100, and £100 to the knight, citizen, or burgess so returned by the sheriff, and so put out; and the knight, citizen, or burgess, so put out, is to have an action of debt of the same £100 against such person put in his place, his executors or administrators.

The same clause then contains a proviso, that such knight, citizen, or burgess, shall begin his suit within three months after the parliament commenced; and that if he do not, then, he that will sue shall have an action for the same penalty which is to be recovered in the same way. It then provides, that no defendant shall wage his law, nor be essoigned, and that such process shall be in the actions aforesaid, as in a writ of trespass done against the peace at the common law.

The above statute applies to any person offending. The stat. 7 and 8 W. 3, c. 7, § 5 (c) imposes a forfeiture of £500 upon the clerk of the crown in favor of the party or parties

Penalty on  
clerk of the  
crown altering  
return, unless  
by order of the  
house.

(a) For this stat. see *ante*,  
400.

(b) *Ibid.*

(c) For this stat. see *ante*,  
777.



aggrieved, to be recovered as before-mentioned, together with the forfeiture of office, and incapacity before-mentioned, in case he shall make any alteration in any return, unless by order of the house of commons.

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Ante, 815.

**SECTION 14.** *Of the illegality of contracts to procure returns, or to procure false or double returns, and the penalty in respect thereof.*

THE penalties and disabilities attendant upon the giving, or promising or agreeing to give money, gifts, or rewards to persons procuring, or endeavouring to procure the return of any person to serve in parliament, have been shewn in a former part. It is now only further to be observed, that, by the stat. 7 and 8 W. 3. c. 7, § 4 (a), all contracts, promises, bonds, and securities whatsoever, thereafter made or given to procure any return of any member to serve in parliament, or any thing relating thereunto, are adjudged void; and whoever makes or gives such contract, security, promise, or bond, or any gift or reward, to procure false or double returns, is to forfeit £300, one third thereof to the king, one third to the poor of the county, city, borough, or place concerned, and one third to the informer, with his costs, to be recovered in any of his majesty's courts of record at Westminster, in manner therein directed.

Ante, 135.

Contracts, &amp;c. to procure returns void.

Persons making such, or making gifts, &amp;c. to procure false or double returns, to forfeit £300.

(a) For this statute, see *ante*, 777.



## Sect. 15.

SECTION 15. *Scotland.*

THE general principles of law as to returns in the cases of the different elections in *Scotland* must be the same as in those for knights of the shire, and for other members in *England*. There are some provisions, however, which being framed for the peculiarities of elections in *Scotland*, apply exclusively there.

(See ante, sect. 1.)

As to where returns to writs and precepts respectively are to be made :

*App. cxxi.*  
County elections, clerk of meeting to make return to sheriff or steward,

As to returns to writs in the case of elections for commissioners of shires :—By the stat. 6 Ann. c. 6. § 5, the clerks of the meetings immediately after the elections are over, are to make a return of the names of the persons elected to the sheriff or steward, who is to annex it to the writ, and return it with the same into the court out of which the writ issued, (this being the court of chancery). Under this statute, therefore, the return is made into the crown office in chancery, as with regard to *English* elections.

who returns to chancery.

*Edinburgh.*  
Return by common clerk to sheriff,

With respect to elections for the city of *Edinburgh* :—By the stat. 6 Ann. c. 6. § 5. the common clerk is to certify the name of the



member to the sheriff of *Edinburgh*, who is to annex it to the writ, and return it with the same into the court from whence the writ issued, (namely, into chancery.)

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and by him to chancery.

With respect to elections for districts of boroughs :—By the same clause of the same statute, the common clerk of the presiding borough is immediately after the election to return the name of the person elected, to the sheriff or steward of the shire or stewartry wherein such presiding borough is, who is to annex it to his writ, and return it with the same, as in the above cases.

App. cxxii.

As to the diligence exacted by the law of parliament in making returns :

The matter of the second section is applicable to elections in *Scotland*, as well as in *England*.

Ante, 726.

As to the time limited for making returns to writs and precepts respectively :

It has been before observed, that in practice there are no scrutinies at elections in *Scotland*. The only statutory provision as to the time within which returns are to be made, is that of the stat. 6 Ann. c. 6. § 5, which directs the clerks at elections for commissioners of shires,

Ante, 717.

App. cxxi. cxxii.  
Returns to writs and pre-



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cepts to be  
made immedi-  
ately after  
election.  
See *ante*, sect. 5.

or for burgesses for districts of boroughs to make the return immediately after the election (*a*.)

As to the manner of, and parties to returns, to writs, and precepts respectively :

*App.* xcvi.  
xcix.  
Commissioners  
for shires how  
formerly re-  
turned,

The representatives of shires were, by the act of the parliament of *Scotland* of 1587, c. 114. (James 6.) to be notified yearly to the director of the chancellary by the commissioners of the year preceding. And they were to be authorized with sufficient commissions sealed and subscribed by six at the least of the barons and freeholders. And by the act of 1597, c. 276, (James 6.) no barons were to be received except they brought and produced sufficient commissions granted to them in full convention of the barons; which commission was to be authenticated with the subscription of a great number of those present, together with that of the clerk of the meeting.

*App.* c.

Return, parties  
to, and form of.

The return is now made by indenture under seal, between the sheriff-depute or sheriff-substitute on the one part, and the clerk of the meeting on the other part (*b*).

(*a*) The stat. 25 Geo. 3. c. 84, § 1, *ante*, 623, applies to elections at *Berwick upon Tweed*. (*b*) For the form of the return, see *App.* xciv. and the indorsement, *ib*.



The indenture is indorsed, and returned with the writ, a counterpart being also executed, which remains with the clerk.

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At other elections :—The commissions given to burgesses sent to the parliament of *Scotland*, were, by an act of convention of the royal boroughs in 1642, appointed to be signed by the magistrates and by the clerk, in the name of the council, and to have the common seal of the borough appended to them. The return is now by indenture under seal between the sheriff-depute or sheriff-substitute on the one part, and the clerk of the borough, in the case of *Edinburgh*, and the clerk of the presiding borough in those of elections for districts of boroughs on the other part (*a*). A counterpart is executed, which remains with the clerk.

1 Wight. 397.  
(n).  
Burgh elections, return, parties to, and form of;

With regard to the matter of the 6th, 7th, and 8th sections, as far as it depends upon the law of parliament, it would be equally the law as applicable to elections in *Scotland*; and the propositions before stated, that the return ought to be made and signed by the proper parties, and that the officer making the principal return ought not to accept and forward an irregular one (*b*), is corroborated by the following cases.

Officer returning into crown office ought not to accept improper sub-return.

(*a*) For the form of a return, see *App.* cxcix.

(*b*) See the case of *Liskeard*, ante, 773. 802.



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20 Journ. 93.  
113.

*Kilrenny*, 18th and 31st Jan. and 1st Feb. 1722-3. The house resolved, "That *Robert Hay* of *Naughton*, sheriff-depute for the shire of *Fife*, having accepted and returned to the clerk of the crown in chancery, an indenture of return of a burghess to serve in this present parliament for the district of burghs of *Kilrenny*, *Anstruther Easter*, *Anstruther Wester*, *Pittenweem*, and *Crail*, the said indenture of return not being signed by the common clerk of the presiding burgh of the said district of burghs, has acted arbitrarily and illegally, in defiance of the laws of this realm, and in breach of the privilege of this house;" and he was ordered into the custody of the serjeant at arms, where he continued till the 1st February.

20 Journ. 91.  
146.

*Inverness*, 22d February 1722-3. Upon the like grounds a resolution of a similar import with that above cited in the case of *Kilrenny*, was made against *Robert Gordon* of *Haughes*, the sheriff-depute for the shire of *Inverness*, for accepting and returning an illegal return for the district of burghs of *Inverness*, *Nairn*, *Forres*, and *Fortrose*, and he was ordered into the custody of the serjeant at arms.

24 Journ. 44,  
45.

*Berwickshire*, 19th January, 1741, the sheriff-depute accepted of two different returns; one from the clerk chosen by the majority, and another from *John Sinclair*, who was chosen by



the minority of the freeholders ; and, having annexed both returns to the writ, the house of commons not only ordered the return made by *Sinclair* to be taken off the file, but likewise resolved, “ That *David Home* of *Wedderburn*, sheriff-depute of the shire of *Berwick*, having accepted, and returned to the clerk of the crown in chancery, an indenture of return of a commissioner to serve in this present parliament for the shire of *Berwick*, not being signed by the proper clerk, has acted arbitrarily and illegally, in defiance of the laws of the land, and in breach of the privilege of this house ;” and he was ordered, for his said offence, to be taken into the custody of the serjeant at arms.

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As to the matter of the 9th, 10th, and 11th sections, it is only necessary further to mention the following, as a case of a double return upon an equality of voices, (a circumstance which, by reason of the before-mentioned provisions of the law respecting the casting vote, does not usually occur at elections in *Scotland*.)

See *ante*, 784.  
790. 796.*Ante*, 615. 617.  
526.

*Dumferling*, &c. 1803. There had been two commissions from *Queensferry*, which was one of the district of burghs, the consequence of which was, that there would, or would not, be an equality of votes of the delegates in favor of the two candidates, according to the decision

1 Peck. 1. 3.

Double return.



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with respect to those commissions. The return concluded in these words: "And the said *Robert Hutton* having no authority for determining in a legal manner which of the two commissions aforesaid, for the burgh of *Queensferry*, and which gave rise to and occasioned the apparent equality of votes as aforesaid, was the effectual one, or whether both of them were to be disregarded; and, consequently, whether the said honourable Captain *Alexander Cochrane*, or the said Sir *J. Henderson* was duly elected as a burgess to attend and serve in the ensuing parliament of the said united kingdom, for the said class or district of burghs above mentioned; therefore the said *R. Hutton* did return the said hon. Captain *Cochrane* of the royal navy, and the said Sir *J. Henderson* of *Fordel*, baronet, or one or other of them, as their respective rights should afterwards be determined in due course of law, as the burgess to attend and serve in the ensuing parliament of the said united kingdom of *Great Britain* and *Ireland* for the said class or district of burghs above mentioned; giving and granting to the said honourable Captain *Cochrane*, and the said Sir *J. Henderson*, bart. or one or other of them, as their respective rights shall afterwards be determined as aforesaid, full and sufficient power," &c.—12th August 1802.

Upon Captain *Cochrane's* counsel proceeding



to open the case, a question arose whether this return was a double return within the resolution of the house of commons of the 18th March, 1727-8. The counsel for Sir *John Henderson* insisted that this was not a double, but a special return; that as such it did not fall within the rule prescribed by the house in their resolution; and that the committee would give the right of pre-audience to the party to whom, from the nature of his case, as disclosed by the petition, it most properly belonged. After argument (a) the committee resolved, "That the *Dumferling* is a double return, within the meaning of the resolution of 1727-8."

There were double returns, which depended upon the question to whom it belonged to be returning officer, in the cases of *Inverness*, &c. 23d Oct. 1722. *Inverbervie*, &c. 25th Oct. 1722. *Dysart*, &c. (b). *Kilrenny*, &c. *Forfar*, 27th October, 1722. *Dumbarton*, &c. 28th March, 1728. *Kilrenny*, &c. 31st Jan. 1766.

*Ante*, 494.

20 Journ. 56, 37.

*Ibid.* 46.

*Ibid.* 48.

*Ibid.* 49.

21 Journ. 104.

30 Journ. 508.

As to the remedy to the party grieved in cases of false returns or illegal double returns:

See *ante*, sect. 12.

(a) See the arguments on each side, 1 Peck. 4. and see the *Colchester* case, *ante*, 804. which is in effect overruled by this decision.

taken upon himself to make the return contrary to the statute was ordered to attend, and was committed to the custody of the serjeant at arms.

(b) The person who had



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This head embraces nearly all the statute law which is applicable to returns in respect of elections in *Scotland*. The making of due returns is effectually enforced by the penalties consequent upon the violation of the law in this particular; and these penalties are in each instance given to the party to whose prejudice the improper return is made.

With respect to elections for commissioners of shires :

County elec-  
tions.  
App. cxliii.

1. As to the clerk of the meeting :—The stat. 7 Geo. 2. c. 16. § 1. had attached a penalty to false returns, whether made by the clerk of the meeting, or by any person not chosen, but presuming to act as clerk. The statute 16 Geo. 2. c. 11. § 16 (a), directs that the clerk chosen by

App. clxii.

(a) At the general election in 1741, the hon. Mr. *Hume Campbell* and Sir *John Sinclair* were candidates for *Berwickshire*. Mr. *Hume Campbell*, as the commissioner last elected, proceeded to call the roll made up at the last Michaelmas head court; but Sir *John Sinclair* gave in protests against eleven of the freeholders standing on that roll, in which he stated objections to their right to vote, and insisted that their names should not be called for the choice of preses and clerk. On the other hand, Mr.

*Carre*, who supported Mr. *Hume Campbell*, protested against the votes of fifteen freeholders of Sir *John Sinclair*'s party. Mr. *Hume Campbell* called the roll as it stood, without regard to the protests on either side. The number of voters were 66; of whom 35 voted for Sir *Robert Pringle* and *James Pringle*, the persons set up by Mr. *Hume Campbell*'s party for preses and clerk, and 31 for Sir *John Hume* and *John Sinclair*, who were set up for these offices by the other party. Upon this a



the majority of the freeholders on the roll, shall return to the sheriff or steward the person elected by the majority of the freeholders on the roll, made up at the meeting for election, in the manner pointed out by the act.

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Clerk to return to sheriff, &c. the person elected by majority.

And, by the same clause, if the clerk so chosen shall refuse or neglect to return the person so elected, or shall return any person other than him who shall be so elected, he is for every such offence, instead of the penalty or forfeiture to which he was made liable by the act of 7 Geo. 2. to forfeit £500 to the candidate chosen by the majority of the freeholders on such roll, to

Penalty on clerk for refusal or neglect, or on returnin any other.

separation took place. Each party proceeded to enrol and strike off several freeholders; and each elected a member. *John Sinclair*, the clerk elected by the minority, was prosecuted by Mr. *Hume Campbell* before the Court of Session, upon the act of the 7th George 2. for having made a false return. That court acquitted him; but their judgment was reversed in the House of Lords, and he was found liable in the statutable penalty of £500. The defence made for *John Sinclair*, and sustained in the Court of Session, was founded upon the words of the statute, by which the penalty was imposed only upon those who should presume to act as clerks, though not *duly* elected, and *wilfully* return to

the sheriff persons not *duly* elected by the major part of the meeting; and he endeavoured to excuse himself upon this ground, that he thought himself *duly* elected clerk; and considered the merits of the election to be with the person he returned, and, therefore, was not guilty of a *wilful* false return. But to this it was held a sufficient answer in the House of Lords, that as the whole matter was transacted in Mr. *Sinclair's* own presence, and the attempts of the separating freeholders were so manifestly illegal, as to leave no room for any pretence of ignorance, or involuntary transgression, he had undoubtedly subjected himself to the penalty of the statute. 1 Wight. 319.



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App. clxxx.

be recovered by him or his executors in the manner directed by the act; that is to say, by way of summary complaint under § 43, before the Court of Session upon 30 days notice to the person complained of, without abiding the course of any roll. By § 44, prosecutions under the act must be commenced within one year after the incapacity, disability, forfeiture, or penalty, shall be incurred.

App. cxlviii.  
Penalty on  
sheriff, &c. an-  
nexing false  
return.

2. As to the sheriff or steward:—The stat. 7 Geo. 2. c. 16. § 8. imposed a penalty upon every sheriff or steward wilfully annexing to the writ any false or undue return, in favour of the person entitled to have been returned, and not returned.

App. clxiii.

The subsequent stat. 16 Geo 2. c. 11, has more minutely pointed out the circumstances under which the penalty for a false return is to attach upon such sheriff or steward, while it also gives him the means of judging who is the person entitled to be returned. That statute, by § 17, has enacted that every sheriff or steward, upon producing to him a copy of the roll made up by the freeholders at the last Michaelmas meeting, or at the last election of a member to serve in parliament, extracted and signed by the sheriff or steward's clerk, and upon producing and shewing him the original minutes of the election of preses and clerk, signed by the com-

App. clxiii.  
Sheriff or  
steward, on  
production to  
him of free-  
holders' roll,  
and minutes of  
election of  
preses and  
clerk, to adopt  
return made by  
clerk chosen by



missioner last elected, or, in his absence, by the sheriff or steward's clerk, is to annex to the writ the return made by the clerk chosen by the majority of the freeholders on such roll.

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majority of  
freeholders.

The law does not require that the subsequent minutes of the freeholders, after the meeting is constituted by the election of a preses and clerk, should be produced to the sheriff. He has no concern with the minutes of the election of a member; and is bound to annex the return made by the clerk chosen by the majority of the freeholders standing upon the roll last made up, without the privilege of inquiring whether the person so returned to him was properly elected or not. Although one should be returned to him who is totally disqualified, he must annex that return, provided it be made by the proper clerk. 1 Wight. 321.

And by the same clause, (§ 17.) of 16 Geo. 2, c. 11, if the sheriff or steward shall neglect or refuse to annex to the writ such return, or if he shall annex to the writ the return made by any other person pretending to be clerk to the election, he is, for every such offence, instead of the penalty or forfeiture to which he was made liable by the act of 7 Geo. 2, to forfeit £500 to the person returned by the clerk, and chosen by

App. clxiii.  
Penalty on  
sheriff or  
steward for  
neglect or re-  
fusal to annex  
return made by  
proper clerk;  
or annexing  
return made by  
any other.



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the majority of the freeholders (a), to be recovered by him or his executors, in the manner directed by the act.

(a) *Sir John Gordon v. Rose of Kilravock*, Nov. 19, 1768. *Sir John Gordon* preferred a complaint to the court of session against the sheriff of *Cromarty* under the above clause, for two penalties of £500 each, for refusing to annex the proper return to the writ, and for annexing another. At the election in 1768, *Sir J. G.* the commissioner last elected, produced an extract of the roll, (the book in which the roll last made up was inserted having been taken from him, in order to prevent his erasing the name of *Mr. Fraser*, whose land had been reduced below the qualification), and erased *Mr. Fraser's* name out of that extract. *Sir J. G.* then proceeded to call the votes for the choice of preses and clerk from that extract. Himself, and five others, voted *Mr. M'Intosh* to be preses, and *Mr. Bean* to be clerk. *Mr. Pulteney*, and five others, voted *Mr. Pulteney* preses, and *Mr. M'Kenzie* the sheriff-clerk of the county, clerk to the meeting; and *Mr. Fraser* not being called, *Sir J. G.* assumed a casting voice which he gave in favour of *Mr. M'Intosh* and *Mr. Bean*; after which, in the same character of commissioner last elected,

hesigned the minutes of their election, and delivered them to *Mr. Bean*. Upon this *Sir J. G.'s* party proceeded to elect the member to serve in parliament, and gave their votes for him, *Mr. Pulteney* and his friends, though all called upon by the preses, except *Mr. Fraser*, making no answer. They did not, however, acquiesce in these proceedings of *Sir J. G.*, and his friends; but having gone to another part of the room with the sheriff's book, in which the roll last made up was inserted, and having admitted *Mr. Fraser*, who likewise voted for *Mr. Pulteney* to be preses, and *Mr. M'Kenzie*, to be clerk, a minute of their election was made out, and signed by *Mr. M'Kenzie* in the character of sheriff-clerk, and likewise by *Mr. Pulteney*, and all the other freeholders in his interest, after which they proceeded to make an election of the member to serve in parliament, and unanimously made choice of *Mr. Pulteney*, neither *Sir J. G.*, nor any of his party, making any answer when their names were called.—Both clerks made returns to the sheriff, *Mr. Bean* producing minutes of an election of preses and



The manner of, and limitation of time for, recovering penalties, depends upon the 43d and 44th sections of the act as before mentioned.

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App. clxxx.

clerk, signed by the commissioner last elected; but Mr. *M'Kenzie*, producing minutes, which were only signed by himself as sheriff-clerk, and by the freeholders in Mr. *Pulteney's* interest. The sheriff annexed to the writ the return made by Mr. *M'Kenzie*, for which, in answer to a protest by Sir J. G. he gave as his reason, "That, having been present during the course of the election, having heard all the minutes read, and having given his utmost attention to the whole proceedings therein for 16 hours, he made his return in favour of *William Pulteney, Esq.* according to conscience, the best of his judgment, and so far as he was able to conceive according to law."

It was contended, on the part of Sir J. G., that the sheriff had no power to review or correct the proceedings of the commissioner last elected, in calling the roll for the choice of preses and clerk. That if the commissioner did wrongfully and improperly refuse the vote of a person standing upon the roll last made up, he thereby subjected himself to the penalty imposed by the statute for such offence, but the sheriff had no power to correct that wrong: That he

was a mere ministerial officer, bound to annex to the writ the return made by the clerk chosen by the freeholders: That, in order to discover to him the person so chosen, the law had ordered the minutes of the election of preses and clerk, signed by the commissioner last elected, or, in his absence, by the sheriff-clerk, to be produced to him: That he was bound to consider these minutes as *probatio probata* of that fact, and that he was not at liberty to betake himself to the evidence of his own senses, or to any other evidence whatever in contradiction thereto: That the minutes produced by Mr. *M'Kenzie* were entitled to no regard, because they were not signed by the commissioner last elected, although he was present in the court-room.

The sheriff, on the other hand, maintained, that the law directed him to annex the return made by the clerk chosen by the majority of the freeholders standing upon the roll last made up, and that Mr. *M'Kenzie* had been so chosen: That he was not bound to consider the minutes signed by the commissioner last elected as *probatio probata*: that the clerk named in these minutes had



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Burgh elections.

App. cxlviii.

With respect to other elections :

As to the sheriff or steward.—The penalty imposed by the stat. 7 Geo. 2. c. 16, § 8, upon sheriffs or stewards making false returns, applied in the cases both of county elections, and elections for burghs.

App. clxxiii.  
Sheriffs or stewards to adopt return by clerk of presiding borough.

By the stat. 16 Geo. 2, c. 11, § 31, every sheriff or steward is to annex to the writ the return made by the clerk of the presiding borough.

Penalty on sheriff so neglecting or refusing.

And, by the same clause, if such sheriff or steward shall neglect or refuse to annex to the writ such return, or if he shall annex to the

been truly chosen by a majority of the freeholders standing upon the roll last made up : That if the law had so intended, it would have ordered nothing more to be produced to him ; but as it likewise ordered the production of a copy of the roll last made up, extracted and signed by the sheriff-clerk, so it was apparent that the legislature must have made that order on purpose to enable him the more easily to discover whether the minutes signed by the commissioner last elected were true or false, and whether the person named in these minutes was truly chosen by the

majority of the freeholders standing upon that roll : That the doctrine of Sir J. G. would throw the return entirely into the hands of the commissioner last elected, which the legislature never intended : That he, as sheriff, had complete evidence that Mr. *M'Kenzie* was the clerk chosen by the majority of freeholders standing upon the roll.—The court of session, after considering the question with the utmost deliberation, acquitted the sheriff from the complaint brought against him. 1 *Wight*, 322. And see Mr. *Wight's* reasoning on this case. *Ib.* 325. *ante*, 311.



writ any return made by any other person, he is, for every such offence, instead of the penalty or forfeiture to which he was made liable by the act of 7 Geo. 2., to forfeit £500 to the candidate returned by the clerk of the presiding borough, to be recovered by him, or his executors, in manner directed by the act.

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*Ante*, 832.

As to the clerk of the presiding burgh :

The stat. 7 Geo. 2, c. 16, § 8, had imposed a penalty upon common clerks of presiding burghs making false returns. The stat. 16 Geo. 2. c. 11. § 30. (a), after directing that the common clerk of the presiding borough shall allow the votes of such persons only who produce commissions authenticated as therein, enacts, that he shall return to the sheriff or steward the person elected by the major part of the commissioners assembled, whose commissions are so authenticated.

*App.* cxlviii.*App.* clxxii.*Ante*, 434.

Clerk of presiding borough to return person elected by majority of delegates.

And, by the same clause, if he neglect or refuse to return such persons so elected to the sheriff or steward, or if he shall return to the

Penalty on clerk neglecting, or refusing, or returning any other.

(a) Mr. *Wight* observes, that neither the common clerk of the city of *Edinburgh*, nor the sheriff of the county, can be subjected to any of the statutable penalties for making a false return of a

member for that city. 1 *Wight*, 380. But it is to be observed, that he might be sued, under the stat. 25 Geo. 3, c. 84, § 14, giving double damages to the person elected and not returned. *Ante*, 813.



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(See ante, 832.)

sheriff or steward any person other than him who is so elected, he is, for every such offence, instead of the penalty or forfeiture to which he was made liable by the act of 7 Geo. 2. to forfeit £500 to the candidate elected by the majority of the commissioners assembled, whose commissions are authenticated, to be recovered by him, or his executors, in the manner directed by the act, and he is also to suffer imprisonment for six calendar months, and be for ever disabled from his office of common clerk.

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SECTION 16. *Ireland.*

THE foregoing matter relating to returns, as far as it depends upon the law of parliament, may be equally looked to as relating to elections in *Ireland*. There are, however, regulations by statute (framed for the most part by analogy to those in *England*), which belong only to elections in *Ireland* (a).

(See ante, sect. 1.)

As to where returns to writs and precepts respectively are to be made :

(a) By the *Irish* stat. 35 Geo. 3, c. 29, sect. 14. No fee, gratuity, or reward whatsoever shall be given, paid, received, or taken, by any sheriff, or returning officer, or

officers of any county, city, town, or borough, for the delivery, return, or execution of any writ or precept, &c.—  
*App.* ccxlv.



With respect to returns to writs:—By the act of union with *Ireland*, (39 and 40 Geo. 3, c. 67, art. 8, § 2,) the writs and returns thereon are returned into the crown office in *Ireland*, and from thence transmitted to the crown-office in *England*, and certified to the house of commons. And copies of the returns, attested by the chancellor, keeper, or commissioners of the great seal of *Ireland* for the time being, are preserved in the crown-office in *Ireland*, and are to be evidence in case the original returns should be lost.

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App. cccxxi.

Returns to writs to be to crown-office in *Ireland*, from whence to the house of commons.

Copies of returns to be preserved in crown-office in *Ireland*.

With respect to returns to precepts:—The course is the same as in *England*.

As to the time limited by the statute law for making returns to writs and precepts respectively: (See ante, sect. 3.)

It has been before seen, that the statute law does not seem to contemplate a scrutiny at elections in *Ireland* (a). Ante, 720.

As to returns to writs:—The *Irish* stat. 35 Geo. 3, c. 29, § 17, (in providing for the case of a general election), requires the sheriff, or she- App. ccxlviii. At general elections, returns to be made to clerk of crown,

(a) Although there are no provisions, as in *England*, whereby a scrutiny may be rendered effectual, there occasionally have been scrutinies in *Ireland*.



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on or before  
writ return-  
able.

riffs receiving the writ, to make due return of such writ to the clerk of the crown on or before the day on which the writ is returnable.

## App. cexlviii.

On vacancies,  
within 40 days  
after test of  
writ.

The same statute, by § 18, requires that, in all cases where a writ shall be issued during a session or prorogation of parliament, the return shall be made to the clerk of the crown, within 40 days after the test thereof.

Penalty on  
sheriff for  
default.

And, by the same clause, a sheriff making default herein, is to forfeit to any person that will sue, £100 for each day such default shall be made, to be recovered according to the act (a).

## App. ccccxiv.

Return to be  
forthwith on  
close of poll.

And the stat. 57 Geo. 3, c. 131, § 1, requires returning officers to make the return forthwith upon the close of the poll.

## App. cexlviii.

At general  
elections, re-  
turn to precept  
to be six days  
before return  
of writ.

As to returns to precepts :—By the *Irish* stat. 35 Geo. 3, c. 29, § 17, in the case of a general election, every returning officer holding an election by virtue of a precept, is to make a due re-

(a) Penalties under this act may be recovered with full costs, by bill, plaint, or information, in any of his majesty's courts at *Dublin*, see § 75 of the act, and therein what it shall be sufficient for the plaintiff to allege and prove. By § 76. In case of discontinuance and non-

suit, the defendant is to have treble costs. By § 77, persons (with certain exceptions) discovering other offenders against the act, so that they may be convicted, are indemnified. § 78, proceedings for penalties must be commenced within a year. App. cclxxxiii. *et seq.*



turn of such precept six days at least before the return of the writ, by virtue of which such precept shall have issued.

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The same stat. by § 18, enacts, that in all cases where a writ shall be issued during a session or prorogation of parliament, and the election shall be holden by a precept thereunder, the return of such precept shall be made to the sheriff within 30 days after the date thereof. And this under the before-mentioned penalty of £100 a day upon the returning officer for default.

*App. cexlviii.*  
On vacancies,  
return to pre-  
cept to be with-  
in thirty days.

Penalty on de-  
fault.

The before-mentioned provision of the 57 Geo. 3, c. 131, § 1, requiring the return to be made forthwith, applies to returns to precepts as well as to writs.

*App. ccccxiv.*  
*Ante*, 140.  
Return to be  
forthwith on  
close of poll.

As to the manner of, and parties to returns to writs and precepts respectively :

(See *ante*, sect.  
5.)

With respect to returns to writs, there is nothing to add to what is before stated as to elections in *England*.

With respect to returns to precepts :—By the *Irish* stat. 35 Geo. 3, c. 29, § 3, the sheriff is to accept the return of the precept from such magistrate and officer only to whom he shall have directed such precept.

*App. ccxl.*  
Sheriff to ac-  
cept return  
only from per-  
son to whom  
precept direct-  
ed.



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See ante,  
sect. 7.

The making of due returns how enforced by the statute law:

*App. cci. ccii.*  
Returning  
officer return-  
ing persons not  
chosen by ma-  
jority to forfeit  
as herein.

The *Irish* stat. 33 H. 8, sess. 2, c. 1, requires (amongst other things) that the knights, citizens, and burgesses should be chosen and elected by the greater number of the inhabitants of the counties, cities, and towns present at the election, and after imposing a penalty upon the inhabitants choosing in any other manner than according to the act, makes every sheriff, or other officer, returning any knight, citizen, or burgess chosen in any other manner, liable to forfeit £100, to be recovered and taken according to that act (that is, one half to the king, and the other to any that will sue). And every knight, citizen, and burgess, taking upon himself so to be, and not chosen and elected according to the act, is to forfeit £100 in like manner.

Penalty on  
persons not so  
chosen, and  
acting as mem-  
bers.

(See ante, sect.  
8. 212.)

As to false returns:

See ante,  
sect. 8. & 12.  
*App. ccxvi.*  
stat. 35 Geo. 3,  
c. 29, § 14, the  
penalty on  
making or  
accepting gifts,  
&c. to procure  
false returns.

There are no provisions which exactly correspond with those which have been before stated with respect to false returns, or the remedy to the party grieved, but by the *Irish* stat. 35 Geo. 3, c. 29, § 14, the making, giving, or accepting any contract, promise, bond, or any gift or reward to procure any false return, sub-



jects the party to a penalty equal to the value of what is given or accepted, or intended so to be, and £200; such penalty to go to the person first suing, to be recovered according to the act (a).

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As to special returns:

(See ante, Sect. 9.)

The law having expressly forbidden the closing the poll, on account of riots, and having given positive directions to the returning officer for his government in such case, and at the same time powerfully protected him under such circumstances; that which has in most instances occasioned special returns to be made at elections in *England*, will not justify a returning officer, in not fully complying with the exigency of the writ or precept.

Ante, 343, 344.  
Riots no ground for a special return.

The legislature in *Ireland*, both upon this head and the following one, seems to have cautiously guarded against the possibility of the issue of an election being left in uncertainty.

In one case a special return is directed, namely, where from the death, or severe illness of the returning officer or officers, the first sworn deputy acts as such under the direction of the stat. 57 Geo. 3, c. 131, § 31, that clause requiring him to make a special return

Where, upon death or illness of returning officer, first sworn deputy acts, he is to make a special return, unless superseded.  
App. cccxxxiii.

(a) See ante, 499. 515. n.



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of the facts as the case may be, unless his authority shall be previously superseded by the recovery of the returning officer, or the legal appointment of a new one, as the case may be.

See *ante*,  
Sect. 12.

See *ante*, sect.  
11.

*App.* cexlvi.  
Double returns  
illegal.

As to double returns:

Double returns are forbidden by law. The *Irish stat.* 35 Geo. 3, c. 29, § 13, enacts that no returning officer or officers shall upon any pretence whatsoever, return more than the number of persons required by his writ or precept.

The case, indeed, which most frequently produces the necessity of double returns in *England* cannot there occur, namely, that of an equality of votes, it being provided, that in all cases there shall be a casting voice.

*Ante*, 719, 720.  
Penalty on re-  
turning officer  
taking such.

The above clause imposes a penalty of £2000 upon any returning officer or officers, returning more than the number of persons by the writ or precept directed to be returned, such penalty to be to the person who will first sue, to be recovered according to the directions of the act (a). The offence also renders such returning officer or officers (by the same clause) incapable of ever

(a) For the provisions as to recovering penalties, see *ante*, 499. 515.



voting at any election for a member or members of parliament.

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However, as this prohibition and penalty would not operate where there are double returns in consequence of disputed claims to be returning officer, such returns not being both made by the same person, instances of double returns upon that ground only, may occur at elections in *Ireland*.

But double returns by adverse claimants to be returning officer not being within the statute may occur. *Ante*, 450, 797.

As to the illegality of contracts to procure returns:

(See *ante*.  
Sect. 14.)

By the *Irish* stat. 35 Geo. 3, c. 29, § 14, all contracts, promises, bonds, and securities, to be made or given to returning officers, for making a return of members to serve in parliament, or to pay returning officers any money, by way of gratuity or reward for making such return, or otherwise in respect thereof, are null and void; and the making, giving, or accepting such contract, promise, bond, or other security, subjects the party to the penalty before-mentioned, with respect to the making or accepting gifts or rewards to procure false returns.

*App.* ccxvi.  
Contracts, gifts, &c. to procure returns void.

Penalty on making or accepting such.  
See *ante*, 842.  
843.

END OF VOL. I.



voluntarily at any election for a member of parliament.

How far, as this prohibition and penalty would not operate where there are double returns in consequence of disputed claims to be returned officer, such returns not being both made by the same person, instances of double returns upon that ground only, may occur at elections in Ireland.

As to the illegality of contracts to procure returns:

By the Irish Statute 25 Geo. 3. c. 29, § 14, all contracts, promises, bonds, and securities, to be made or given to returning officers, or making a return of members to serve in parliament, or to pay returning officers any money, by way of gratuity or reward for making such return, or otherwise in respect thereof, are null and void; and the making, giving or accepting such contract, promise, bond, or other security, subjects the party to the penalty before-mentioned, with respect to the making or accepting gifts or rewards to procure false returns.

END OF VOL. I.





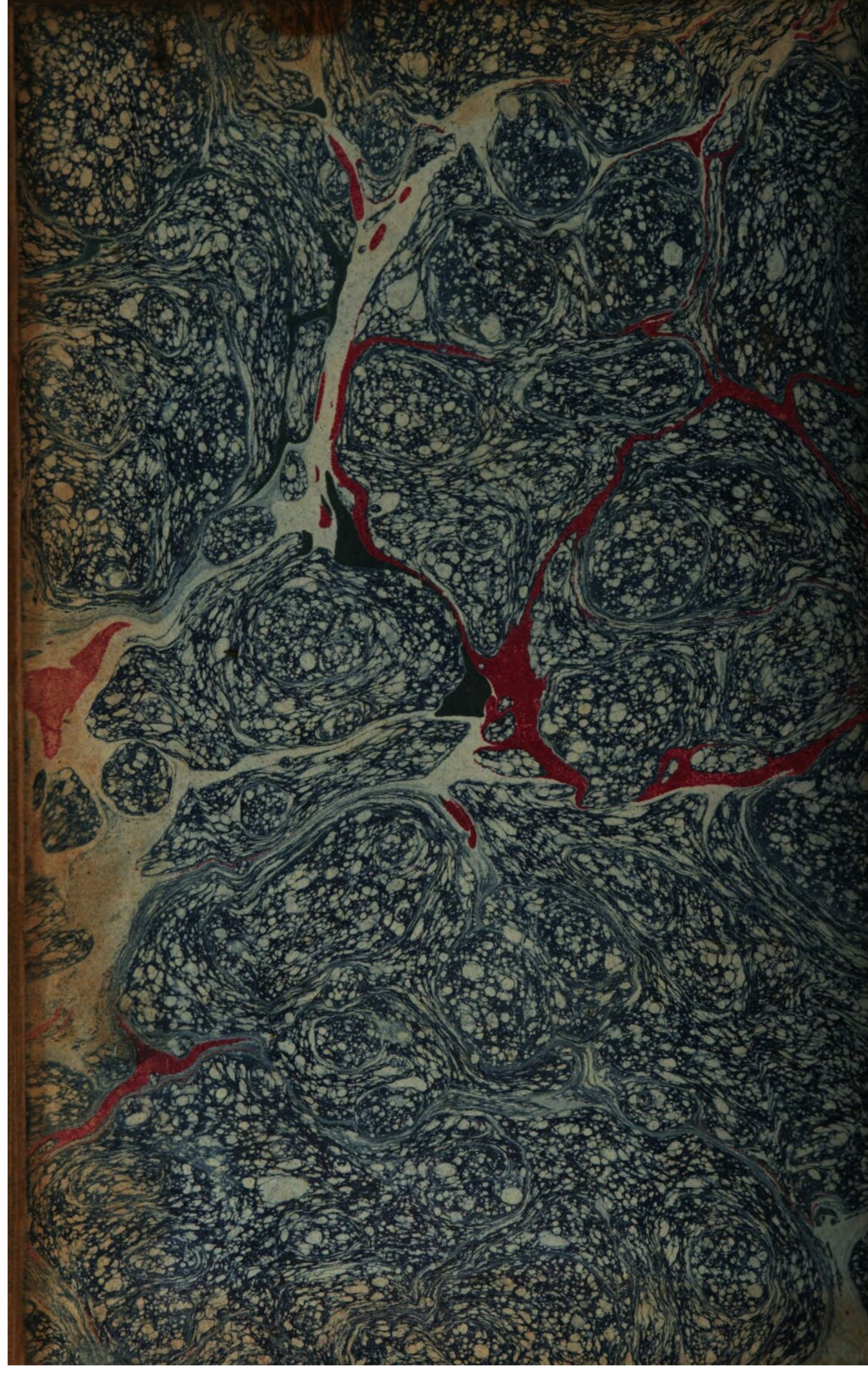




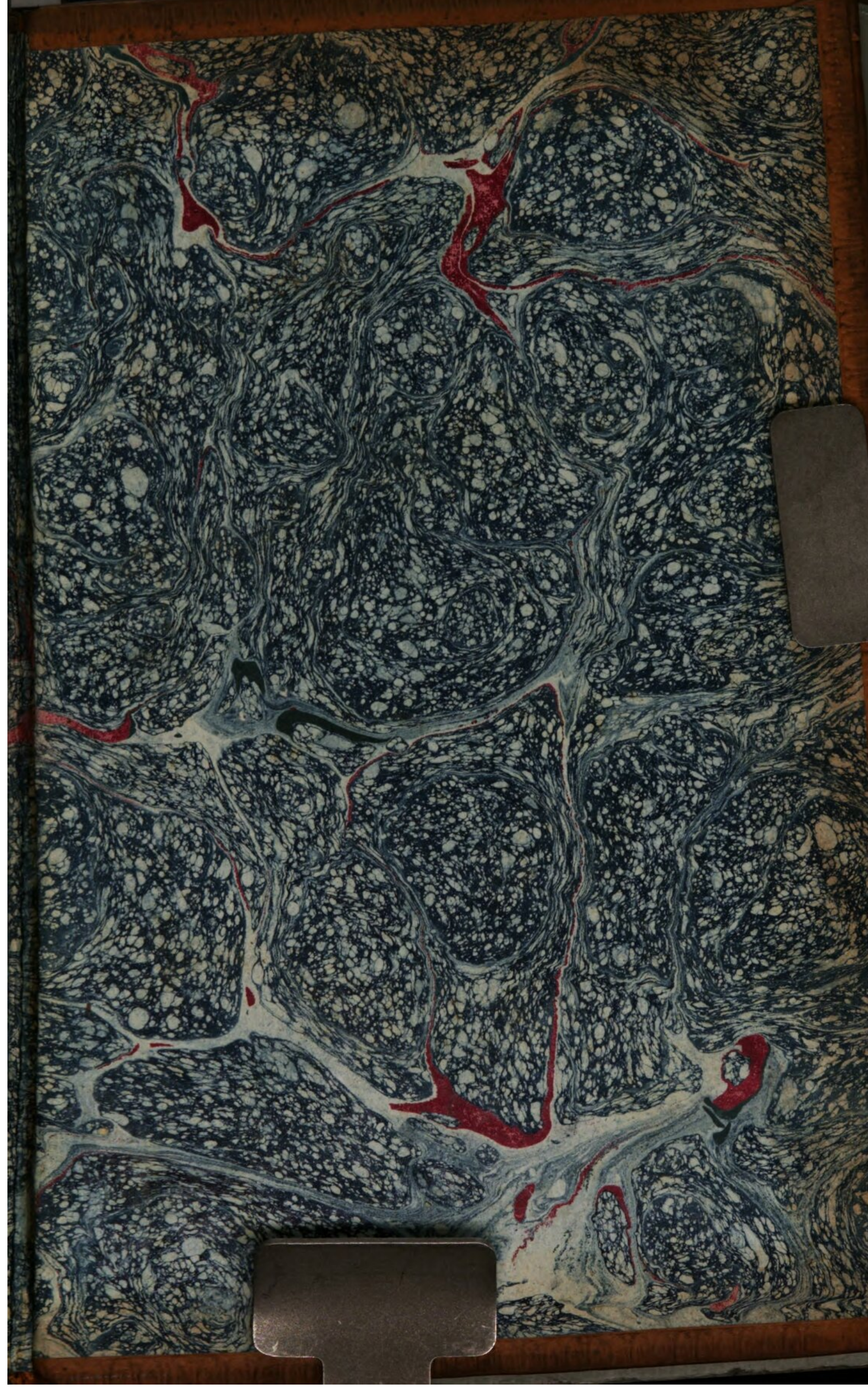


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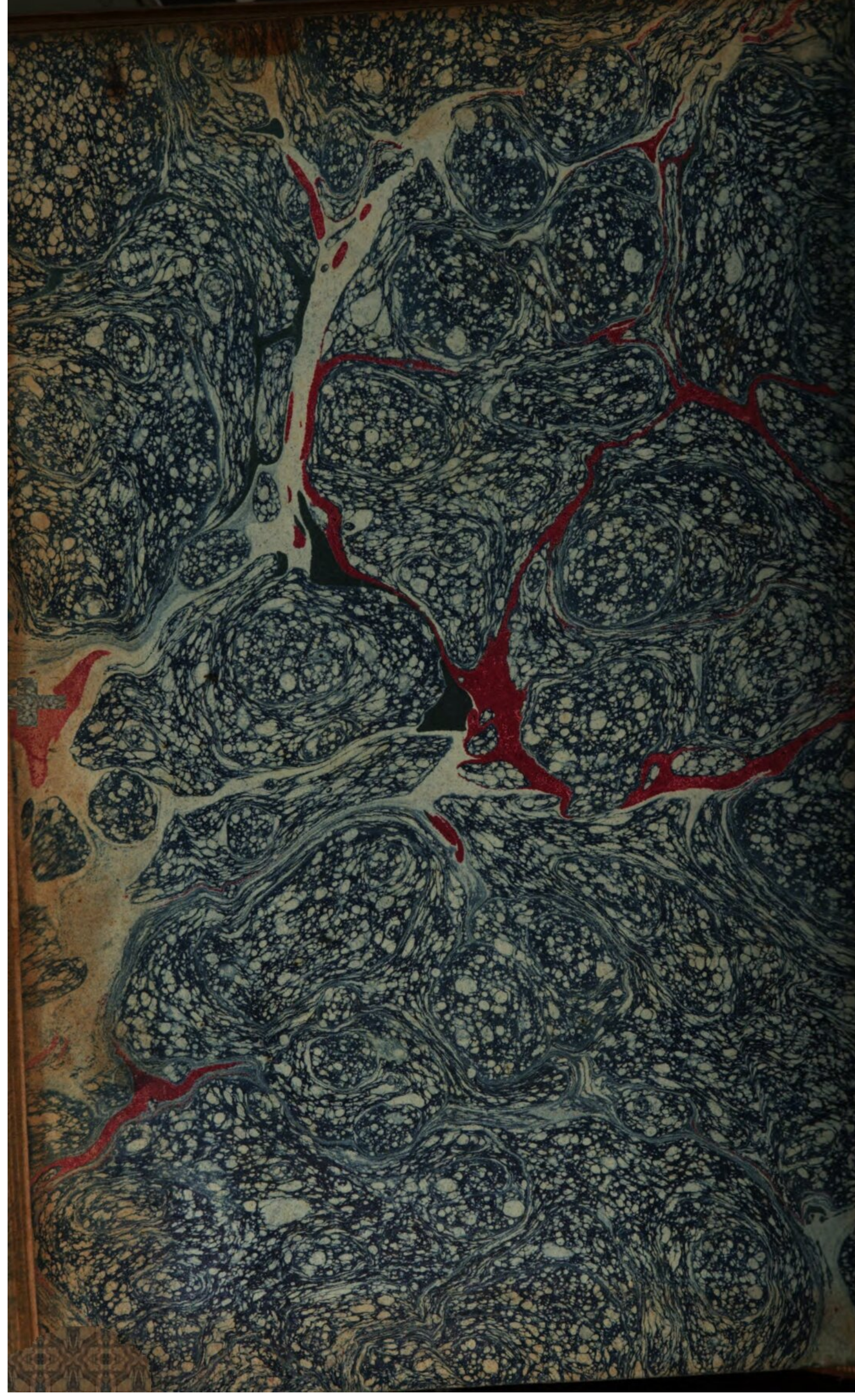




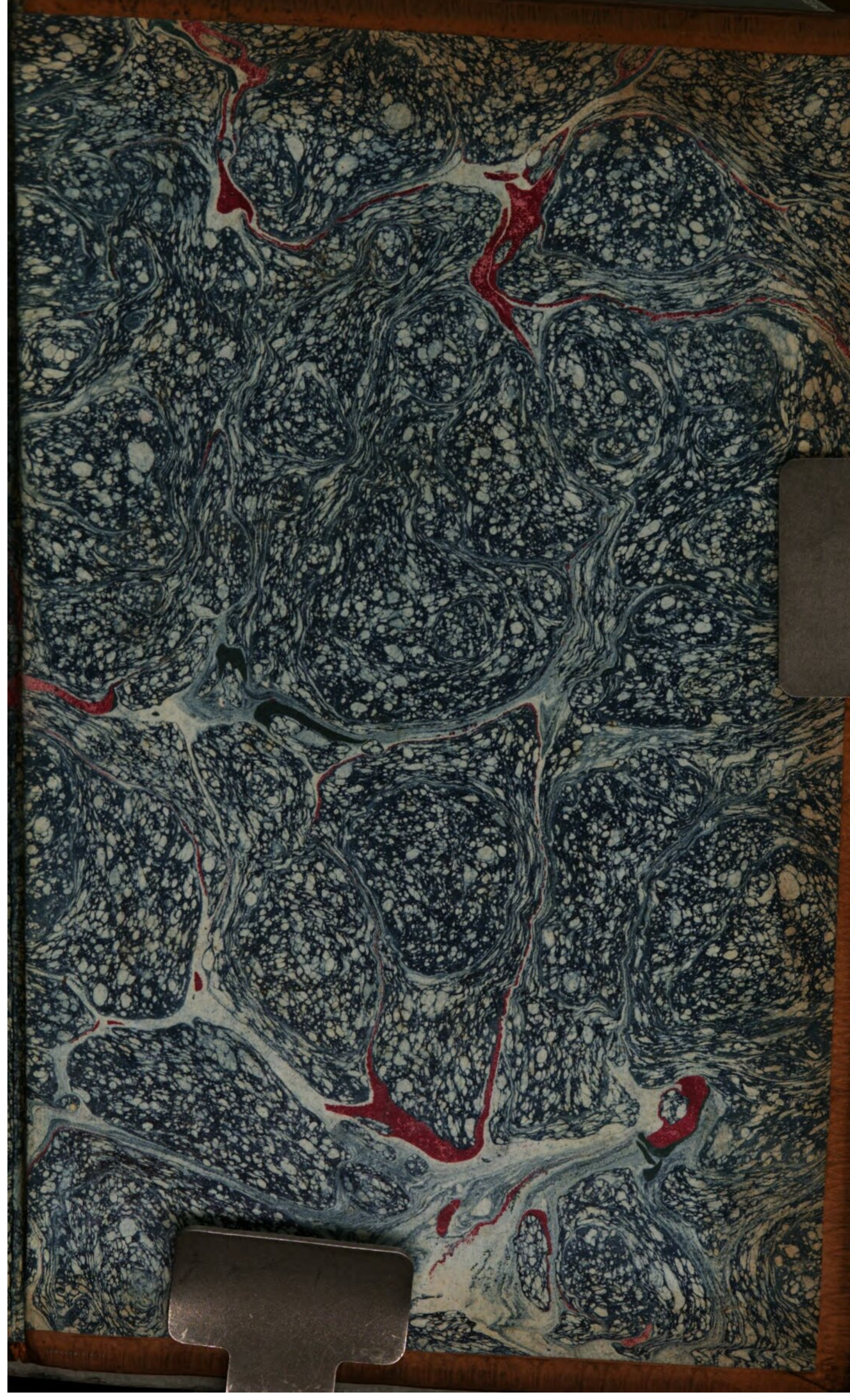




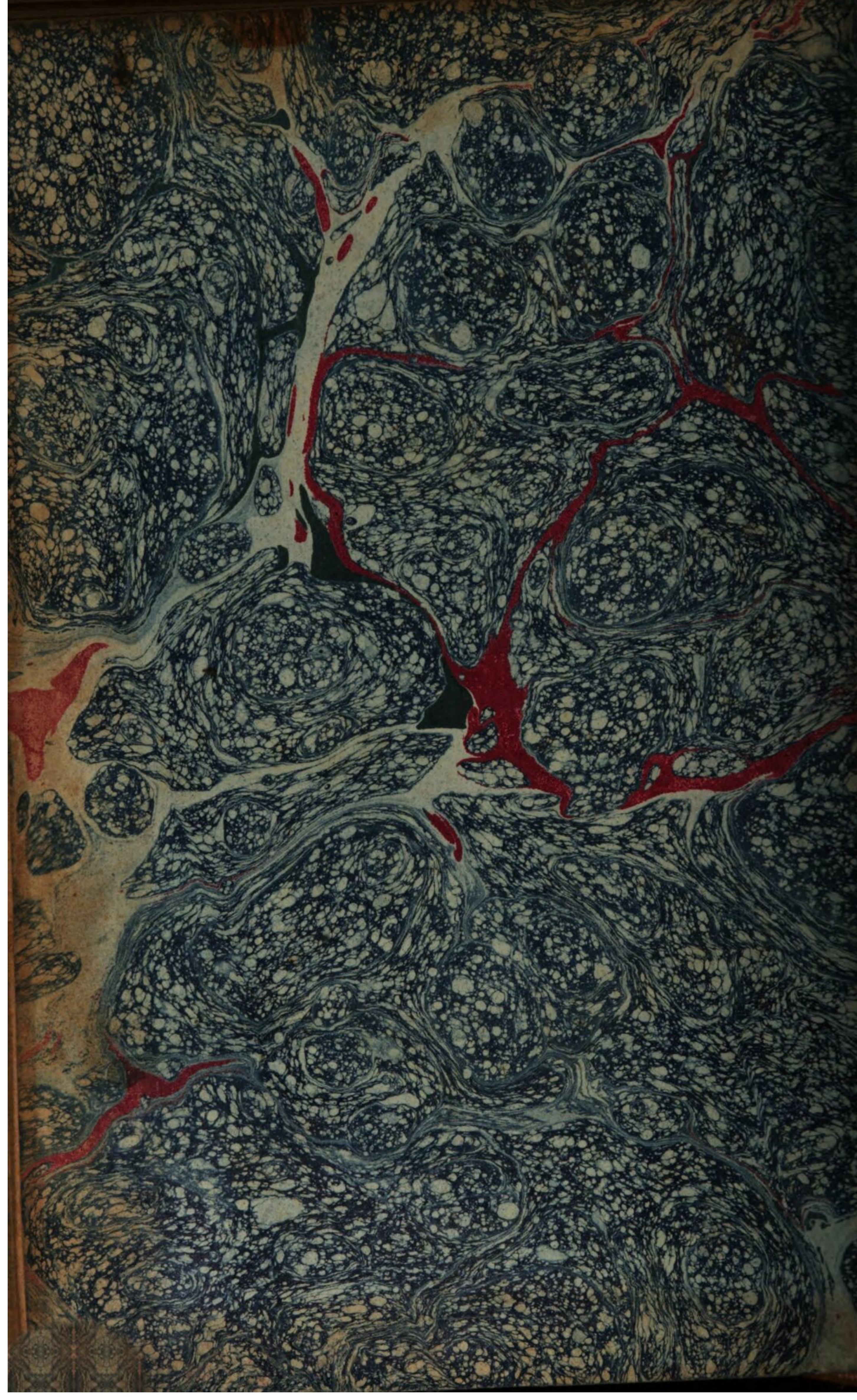














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